



2014 Georgia Insurance Law Year In Review

We provide a summary below of the significant insurance cases decided in 2014 by the Georgia Supreme Court and the Georgia Court of Appeals.

Bad Faith

Georgia law does not allow a claim for bad faith unless an insurer breaches a duty to pay insurance benefits. *Lloyd's Syndicate No. 5820 v. AGCO Corp.*, 294 Ga. 805 (2014).

Duty to Defend

If an insurer wrongly declines to defend an insured, and the insured allows a default judgment, the insurer may be liable for the amount of the default judgment, even if greater than the policy limit. *Khan v. Landmark American Ins. Co.*, 326 Ga. App. 539 (2014).

Appraisal

Appraisal under a property insurance policy is allowed to determine the amount of the loss, but not to determine coverage issues. Under Georgia law, a dispute over the extent of damage from a covered peril is deemed a coverage issue not subject to appraisal. *Lam v. Allstate Ins. Co.*, 327 Ga. App. 151 (2014).

D&O Liability

Georgia law applies a form of the business judgment rule, under which claims for negligence against directors and officers for their business decisions are subject to a presumption that they act in good faith and exercise ordinary care. But plaintiffs can rebut that presumption with evidence that directors and officers did not use proper due diligence in making business decisions. *FDIC v. Loudermilk*, 295 Ga. 579 (Ga. 2014).

Discovery of Insurance

A defendant in Georgia litigation must disclose its insurance coverage to a plaintiff, and if it fails to do so, any judgment in favor of the defendant will be reversed. *Ford Motor Co. v. Conley*, 294 Ga. 530 (2014).

Motor Vehicle Exclusion

A motor vehicle exclusion in a homeowner's policy bars coverage for wrongful death claims allegedly caused by providing alcohol to a minor before a fatal accident, even if the automobile was not owned, maintained, or used by the insured. *Sauls v. Allstate Prop. & Cas. Ins. Co.*, 326 Ga. App. 821 (2014).

Mold Sublimit

A water damage loss resulting in mold under a property policy will be covered to the full amount of the policy limit notwithstanding a mold sublimit. The mold sublimit will only apply to losses caused solely by mold. *Henderson v. Georgia Farm Bureau*, 328 Ga. App. 396 (2014).

Uninsured Motorist Coverage

Under Georgia law, uninsured motorist coverage applies automatically under an automobile liability policy, unless that coverage is specifically waived. *Assaf v. Cincinnati Ins. Co.*, 327 Ga. App. 475 (2014); *Roberson v. 21st Century Nat'l Ins. Co.*, 327 Ga. App. 545 (2014).

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