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# INSURER'S LIABILITY FOR BAD FAITH DAMAGES: *TIMMONS v. ROYAL GLOBE INSURANCE CO.*

## I. INTRODUCTION

In the recent decision of *Timmons v. Royal Globe Insurance Co.*,<sup>1</sup> the Oklahoma Supreme Court heightened the standard of conduct an insurance company must meet in dealing with its insureds. In answering the questions of whether an insurance company's conduct must be outrageous to support a recovery for emotional distress<sup>2</sup> and whether the standard of proof is convincing clarity or a preponderance of the evidence,<sup>3</sup> the court seemingly increased the possibility of plaintiff recovery for the tort of failure to deal in good faith with an insured claimant.

Although *Timmons* was not the first Oklahoma case to allow recovery for an insurer's bad faith in dealing with a first-party claimant,<sup>4</sup> *Timmons* is important because of its increasing protection of insured parties. The opinion changed the emphasis from bad faith to a lack of good faith, a change which lessens the plaintiff's burden of proof.<sup>5</sup> The resolution of several issues in the case provides assistance to plaintiff insureds. This Recent Development identifies the protection being offered to insureds, clarifies the conduct which is indicative of a lack of good faith, and looks at the Oklahoma cases preceding *Timmons* demonstrating the recent evolution in Oklahoma of a cause of action designed to safeguard the "peace of mind" purchased by insured parties by payment of insurance premiums.<sup>6</sup>

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1. 53 OKLA. B.J. 1898 (1982).

2. *Id.* at 1904.

3. *Id.* at 1901.

4. The tort was first recognized in Oklahoma in the case of *Christian v. American Home Assurance Co.*, 577 P.2d 899 (Okla. 1977), in which the plaintiff was permitted recovery for defendant's bad faith refusal to pay a disability claim.

5. 53 OKLA. B.J. at 1902. The court held that bad faith is not a fundamental issue in a *Christian* type case. Rather, the issue is whether there has been a breach of the duty to deal in good faith. *Id.* at 1902-03.

6. See *Fletcher v. Western Nat'l Life Ins. Co.*, 10 Cal. App. 3d 376, 404, 89 Cal. Rptr. 78, 95 (1970); *Crisci v. Security Ins. Co.*, 66 Cal. 2d 425, 434, 426 P.2d 173, 179, 58 Cal. Rptr. 13, 19 (1967) ("Among the considerations in purchasing . . . insurance, as insurers are well aware, is the peace of mind and security it will provide in the event of an accidental loss."); *McCorkle v. Great Atl. Ins. Co.*, 637 P.2d 583, 588 (Okla. 1981) ("[T]he purchaser of insurance [contracts] to protect

## II. FACTS

Royal Globe was the insurer of a Piper aircraft piloted by John D. Timmons at the time of its crash. Royal Globe's investigator, on different occasions, identified himself as a salvage buyer, an investigator working for Royal Globe, and an investigator representing Flight Investigators, Inc. Although the investigator noted in a memorandum that the aircraft's airworthiness certificate, later missing, was on the airplane at the crash site, he failed to report its presence to the Federal Aviation Administration. A Royal Globe representative informed Timmons that a guard would be unnecessary due to the remoteness of the crash site. However, when theft did occur, Royal Globe listed failure to guard against pilferage as a reason to deny coverage. Rather than obtaining Timmons' authorization to view his records to clear up confusion relating to his medical certificate, Royal Globe contacted an anonymous source within the F.A.A. Even after Timmons was issued a new certificate, Royal Globe continued to contend that there was some problem concerning his medical certificate.<sup>7</sup>

Further, Royal Globe cited failure to cooperate as a reason for denying coverage even though Timmons had turned over all relevant documents to the company shortly after the crash. In addition, Timmons was told that a more favorable settlement could be reached if he would discharge his attorney.<sup>8</sup>

At trial, a jury returned a verdict for Timmons of \$9,126.86 actual damages, \$25,000 for mental pain and suffering, and \$3,000,000 punitive damages against Royal Globe and its representative, David Sowards.<sup>9</sup> On appeal, Royal Globe asserted that an instruction, stating that the burden of proof in a first-party bad faith case<sup>10</sup> is a preponderance of the evidence, was prejudicial error;<sup>11</sup> that it was error to refuse

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himself/herself against the risks of accidental losses and the mental stress which could result from such losses."); *Christian v. American Home Assurance Co.*, 577 P.2d 899, 902 (Okla. 1977) (quoting the "peace of mind" rationale found in *Crisci* and *Fletcher*).

7. 53 OKLA. B.J. at 1899.

8. *Id.*

9. *Id.* at 1898. However, Sowards appealed on the theory that his demurrer should have been sustained because he was not a party to the contract. *Id.* at 1901. The court agreed, stating, "[I]t is clear that the cause will not lie against a stranger to the contract." *Id.*

10. First-party bad faith cases are those such as *Timmons* in which the insured directly makes a claim against the insurer. They are to be distinguished from third-party bad faith cases, where a third party makes a claim against the insured, the insured calls on the insurer to defend the claim, and the insurer fails to defend in good faith or to make a reasonable settlement within the policy limits. See, e.g., *Crisci v. Security Ins. Co.*, 66 Cal. 2d 425, 426 P.2d 173, 58 Cal. Rptr. 13 (1967).

11. 53 OKLA. B.J. at 1901. The defendant relied on language in *Christian v. American Home*

to provide the jury with a definition of bad faith<sup>12</sup> or good faith;<sup>13</sup> and that the defendants' actions were not outrageous enough to support an award for mental anguish.<sup>14</sup>

The Supreme Court of Oklahoma held that the burden of proof in a first-party bad faith case is a preponderance of the evidence;<sup>15</sup> that it is not error for the trial court to refuse to define bad faith<sup>16</sup> or good faith;<sup>17</sup> and that an insurer's conduct need not be outrageous to support an award for mental suffering.<sup>18</sup> In dictum, the court stated that mental suffering need not be severe when it is an element of damages in a bad faith claim.<sup>19</sup>

### III. THE RISE OF THE TORT OF BAD FAITH IN FIRST-PARTY CLAIMS IN OKLAHOMA

Insurance companies are held to owe a special duty to their customers.<sup>20</sup> The opinions have stressed the quasi-public nature of insurance companies, the consumer's lack of bargaining power, and the resultant high degree of government regulation as grounds for extending the protection offered to insurance purchasers.<sup>21</sup> In its first recognition of the tort of bad faith dealing with an insured's first-party claim in *Christian v. American Home Assurance Co.*,<sup>22</sup> the Oklahoma

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Assurance Co., 577 P.2d 899 (Okla. 1977), referring to "a clear showing of bad faith by the insurer." *Id.* at 905.

12. 53 OKLA. B.J. at 1902.

13. *Id.* at 1903.

14. *Id.* at 1904.

15. *Id.* at 1901. The court stated that the "clear showing" language in *Christian* relied upon by the defendants was not intended to vary the burden of proof and that had the court intended to vary the burden from the standard burden in a civil case, it would have done so explicitly.

16. *Id.* at 1902. The court stated that "a judgment will not be reversed for refusal to give additional or more detailed instructions requested by the appealing party where that refusal does not appear to have resulted in a miscarriage of justice . . . if the cause was submitted to the jury under proper instructions on fundamental issues." *Id.* The court went on to say that bad faith is not a fundamental issue in a *Christian* type case. *Id.*

17. *Id.* at 1903. The instruction given was that recovery by the plaintiff required a finding that the defendants did not act in good faith. The appellants did not show the court that they requested an instruction defining fair dealing and good faith, so the court refused to find the lack of the instruction to be error. *Id.*

18. *Id.* at 1904. In allowing recovery in the absence of outrageous conduct, the court relied on *St. Louis-San Francisco Ry. v. Clark*, 104 Okla. 24, 229 P. 779 (1924), a case in which a war veteran was permitted recovery for emotional distress against the railway based on its agent's roughly stated refusal to honor a government travel requisition to a hospital. The court in *Timmons* did reduce the amount of punitive damages to \$1,500,000 because the \$3,000,000 award was the result of an "improper sympathetic response on the part of the jury." 53 OKLA. B.J. at 1906.

19. 53 OKLA. B.J. at 1904.

20. *Christian*, 577 P.2d at 902.

21. *Id.*

22. 577 P.2d 899 (Okla. 1977); see note 4 *supra*.

Supreme Court stated,

This is a distinct tort based upon an implied duty of the insurer to act in good faith and deal fairly with its insured. This duty is not consensual; it is imposed by law. Breach of the duty sounds in tort, notwithstanding that it also constitutes a breach of contract, and plaintiff insured may recover consequential and, in a proper case, punitive damages.<sup>23</sup>

Prior to the *Christian* case, the rule had been that an insurance company could be liable for no more than the money benefits due under the contract.<sup>24</sup>

Not unexpectedly, the argument soon was made by insurance companies that the tort recognized in *Christian* applied only to limited types of insurance.<sup>25</sup> The court rejected this argument, holding that the standard is applicable to all types of insurance companies<sup>26</sup> and that reasonableness is a question for the trier of fact.<sup>27</sup>

As insurance companies pressed to limit *Christian*, plaintiffs pushed for expansion of the protection being offered. In *Wyman v. Commercial Union Assurance Co.*,<sup>28</sup> the Tenth Circuit Court of Appeals, applying Oklahoma law, refused to expand good faith to include a duty to warn the plaintiff of the statute of limitations.

#### IV. CONDUCT CONSTITUTING BAD FAITH<sup>29</sup>

Since the reasonableness standard<sup>30</sup> is to be determined by the trier of fact,<sup>31</sup> probably a jury, and there is no requirement that the trial

23. *Id.* at 901.

24. *Wilson v. Prudential Ins. Co. of Amer.*, 528 P.2d 1135 (Okla. Ct. App. 1974).

25. *McCorkle v. Great Atl. Ins. Co.*, 637 P.2d 583, 587 (Okla. 1981). The insurer claimed that the amounts due under fire insurance claims are inherently unascertained and that allowing recovery for punitive damages in a bad faith case in which the amount is unascertained denies the insurer its opportunity to have the amount due judicially determined. *Id.*

26. *Id.* at 588.

27. *Id.* at 587. "[I]f there is conflicting evidence from which different inferences may be drawn regarding the reasonableness of insurer's conduct, then what is reasonable is always a question to be determined by the trier of fact by a consideration of the circumstances in each case." *Id.*

28. 656 F.2d 603 (10th Cir. 1981).

29. Bad faith was defined and the use of the term criticized in *Austero v. National Casualty Co.*, 84 Cal. App. 3d 1, 148 Cal. Rptr. 653 (1978). "In our view the words bad faith are actually an imprecise label for what is essentially some kind of *unreasonable* insurer conduct, and such words serve only to obscure and oversimplify the rationale of the decisions in this broad subject-matter area." *Id.* at 26, 148 Cal. Rptr. at 670 n.22 (emphasis in original). The term "unreasonable" comes no closer to clarifying the prohibited behavior than the words "bad faith."

30. *Christian v. American Home Assurance Co.*, 577 P.2d 899 (Okla. 1977). "[T]ort liability may be imposed only where there is a clear showing that the insurer *unreasonably*, and in bad faith, withholds payment of the claim of its insured." *Id.* at 905 (emphasis added).

31. *McCorkle v. Great Atl. Ins. Co.*, 637 P.2d 583, 587 (Okla. 1981); *see supra* note 27.

judge define bad faith<sup>32</sup> or good faith,<sup>33</sup> there exists little guidance regarding precisely what conduct will result in liability. The only indications available are those cases in which conduct has been found to be unreasonable. Since Oklahoma law in this area is largely borrowed from California law,<sup>34</sup> both Oklahoma and California cases will be considered as indicators. The types of conduct that have been found to constitute bad faith are failure to communicate,<sup>35</sup> intimidation and deceit,<sup>36</sup> failure to investigate,<sup>37</sup> falsely accusing the claimant,<sup>38</sup> and refusing payment with no valid defense.<sup>39</sup>

Lack of communication in the form of failure to send notice of a denial of coverage directly to the insured can lead to liability.<sup>40</sup> The Seventh Circuit Court of Appeals emphasized the importance of communication when it stated, "[I]t does not appear unreasonable to require the insurance company, under the general duty of good faith and fair dealing, to inform the insured of any questions that it has as to liability so that the insured can supply additional proof if necessary."<sup>41</sup> At times, it is the form and manner of communication which causes problems. Liability has been found in circumstances in which an insur-

32. *Timmons v. Royal Globe Ins. Co.*, 53 OKLA. B.J. 1898 (1982); *see supra* note 16.

33. *Id.* at 1903; *see supra* note 17.

34. The *Christian* case relied heavily upon *Fletcher v. Western Nat'l Life Ins. Co.*, 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970) and *Gruenberg v. Aetna Life Ins. Co.*, 9 Cal. 3d 566, 510 P.2d 1032, 108 Cal. Rptr. 480 (1973). *See* note 4 *supra*.

35. *See, e.g.*, *Craft v. Economy Fire & Casualty Co.*, 572 F.2d 565 (7th Cir. 1978); *Phillips v. Aetna Life Ins. Co.*, 473 F. Supp. 984 (D.C. Vt. 1979) (the court cited *Christian* in holding that Vermont law allowed recovery of punitive damages for bad faith rejection of a claim).

36. *See, e.g.*, *Craft v. Economy Fire & Casualty Co.*, 572 F.2d 565 (7th Cir. 1978); *Mustachio v. Ohio Farmer's Ins. Co.*, 44 Cal. App. 3d 358, 118 Cal. Rptr. 581 (1975); *Fletcher v. Nat'l Ins. Co.*, 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970); *Timmons v. Royal Globe Ins. Co.*, 53 OKLA. B.J. 1898 (1982).

37. *See, e.g.*, *Craft v. Economy Fire & Casualty Co.*, 572 F.2d 565 (7th Cir. 1978); *Egan v. Mutual of Omaha*, 24 Cal. 3d 809, 598 P.2d 452, 157 Cal. Rptr. 482 (1979).

38. *See, e.g.*, *Gruenberg v. Aetna Ins. Co.*, 9 Cal. 3d 566, 510 P.2d 1032, 108 Cal. Rptr. 480 (1973); *Austero v. National Casualty Co.*, 84 Cal. App. 3d 1, 31, 148 Cal. Rptr. 653, 673 (1978); *Mustachio v. Ohio Farmer's Ins. Co.*, 44 Cal. App. 3d 358, 118 Cal. Rptr. 581 (1975).

39. *See, e.g.*, *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d 809, 598 P.2d 452, 157 Cal. Rptr. 482 (1979); *Austero v. National Casualty Co.*, 84 Cal. App. 3d 1, 148 Cal. Rptr. 653 (1978).

40. *See Phillips v. Aetna Life Ins. Co.*, 473 F. Supp. 984 (D.C. Vt. 1979), in which the company sent the notice of denial of coverage to the hospital. *Id.* at 987-88. When the company realized it may have been mistaken in denying benefits, it did not notify the claimant. *Id.* at 987. This total lack of direct communication led to liability. *See id.* at 990.

41. *Craft v. Economy Fire & Casualty Co.*, 572 F.2d 565, 572 (7th Cir. 1978) (footnotes omitted). *But cf.* *Wyman v. Commercial Union Assurance Co.*, 656 F.2d 603 (10th Cir. 1981) (insurer is not required to inform insured of statute of limitations). *Craft* suggests that if the insured has failed to produce the information which is necessary in order for the insurer to be obligated to pay, the insurer must tell the insured what information is missing. *Wyman* rejected similar reasoning as to the statute of limitations. 656 F.2d at 604-05.

ance company attempts to pressure plaintiffs into settling for less than the fair value of the claim,<sup>42</sup> or tries to extract additional consideration before paying the claims for which it is liable.<sup>43</sup> In *Fletcher v. Western National Life Insurance Co.*,<sup>44</sup> a case heavily relied upon by the *Christian* court, the court found that "defendants' threatened and actual bad faith refusals to make payments under the policy, maliciously employed by defendants in concert with false and threatening communications directed to plaintiff for the purpose of causing him to surrender his policy or disadvantageously settle a nonexistent dispute is essentially tortious in nature."<sup>45</sup> In *Timmons*, the plaintiff was told that a more favorable settlement could be reached if he would dismiss his attorney.<sup>46</sup>

There is also authority that "an insurer may breach the covenant of good faith and fair dealing when it fails to properly investigate its insured's claim"<sup>47</sup> and denies the claim based on the information supplied by the claimant. However, the cases are not uniform in this view. The argument that "a breach of its duty of good faith and fair dealing can be found even where the insurer maintains actual, non-reckless doubts as to its liability, if a reasonable investigation would have disclosed information making those doubts untenable" was rejected by the Seventh Circuit.<sup>48</sup> The court reasoned that this premise "conflicts with the accepted law that the insured has the burden of showing that the preconditions to the insurance company's obligation to pay have been met."<sup>49</sup>

Another ground for denying payment which may be tempting to

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42. *Craft v. Economy Fire & Casualty Co.*, 572 F.2d 565 (7th Cir. 1978).

43. *Id.* The additional consideration consisted of a dismissal of the breach of contract claim. *Id.* at 571, 573.

44. 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970).

45. *Id.* at 401, 89 Cal. Rptr. at 93-94. The court found liability for intentional infliction of emotional distress and stated that a cause of action also existed for bad faith dealing. *See also* *Mustachio v. Ohio Farmers Ins. Co.*, 44 Cal. App. 3d 358, 362, 118 Cal. Rptr. 581, 583 (1975) ("An insurance company which has no defense to a claim as such, has no business threatening to retire its file if the claimant does not accept its first offer.").

46. 53 OKLA. B.J. at 1899.

47. *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d 809, 817, 598 P.2d 452, 456, 157 Cal. Rptr. 482, 486 (1979). "[A]n insurer cannot reasonably and in good faith deny payments to its insured without thoroughly investigating the foundation for its denial." *Id.* at 819, 598 P.2d at 457, 157 Cal. Rptr. at 487.

48. *Craft v. Economy Fire & Casualty Co.*, 572 F.2d 565, 571 (7th Cir. 1978).

49. *Id.* at 572. *See also* *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d 809, 828, 598 P.2d 452, 563, 157 Cal. Rptr. 482, 493 (1979) (Clark, J., concurring in part, dissenting in part). The dissent would have held that the insurer had acted in a reasonable manner, relying on credible evidence that no further benefits were due, and that it should not be required to pay punitive damages. He further stated that were the majority approach followed, "[i]nsurers would be unable to litigate

insurance companies is that of the claimant's fraud. While the courts have recognized that fraudulent claims are indeed a real problem for insurers,<sup>50</sup> the insurers must have a reasonable basis for accusations of fraud or other wrongdoing. Insinuations that the claimant is guilty of arson when there is no evidence to support such a contention have been held to be strong evidence of bad faith and have led to liability.<sup>51</sup>

The final form of conduct that subjects insurers to liability is usually present when any of the other prohibited behaviors is present. Refusing to pay benefits without a valid defense will lead to liability for all the damages consequent to this refusal. Thus, the issue of how strong a defense must be before an insurer is safe in denying benefits becomes significant. The concern since early cases has been that the insurance company would be subjected to a form of strict liability—that it would be liable for large awards of consequential and punitive damages any time it refused to pay a claim, even if it were reasonable to so refuse.<sup>52</sup> The *Christian* decision dealt with this issue, stating, "We do not hold that an insurer who resists and litigates a claim made by its insured does so at its peril that if it loses the suit or suffers a judgment against it for a larger amount than it had offered in payment, it will be held to have breached its duty to act fairly and in good faith and thus be liable in tort."<sup>53</sup> In fact, however, the reasonableness of the insurance company's refusal to pay is usually assessed after the validity of the claim has been determined.<sup>54</sup> And while the courts attempt to elim-

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questionable claims and would be required in all cases to avoid potential liability for punitive damages." *Id.* at 829, 598 P.2d at 463, 157 Cal. Rptr. at 493.

50. See *Austero v. National Casualty Co.*, 84 Cal. App. 3d 1, 148 Cal. Rptr. 653 (1978), in which the court stated, "[A]n insurer is not required to pay every claim presented to it. Besides the duty to deal fairly with the insured, the insurer also has a duty to its other policyholders and to the stockholders . . . not to dissipate its reserves through the payment of meritless claims." *Id.* at 30, 148 Cal. Rptr. at 672.

51. See, e.g., *Mustachio v. Ohio Farmers Ins. Co.*, 44 Cal. App. 3d 358, 362, 118 Cal. Rptr. 581, 583 (1975) (the insurer "violates every principle of good faith and fair dealing to intimate to the assured that he is suspected of arson when any basis for such a charge has been eliminated by the only investigator employed to look into it"); *Gruenberg v. Aetna Ins. Co.*, 9 Cal. 3d 566, 570-72, 510 P.2d 1032, 1034-35, 108 Cal. Rptr. 480, 482-83 (1973) (statements of the insurance investigator to the police and court that the claimant was overinsured led to a police investigation).

52. This strict liability was called an "act-at-your-own-risk" rule in *Austero v. National Casualty Co.*, 84 Cal. App. 3d 1, 148 Cal. Rptr. 653 (1978), a case which denied that such strict liability was the rule. See *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d at 829, 598 P.2d at 463, 157 Cal. Rptr. at 493 (Clark, J., concurring in part, dissenting in part), discussed *supra* note 49.

53. 577 P.2d at 904-05; see Justice Clark's dissent in *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d at 824, 598 P.2d at 460, 157 Cal. Rptr. at 490, discussed *supra* note 49.

54. See, e.g., *Elliano v. Assurance Co. of Amer.*, 45 Cal. App. 3d 170, 119 Cal. Rptr. 653 (1975). "Central to this case is a fact which sharply distinguishes it from others where liability based on bad faith was found . . . . That fact is that negotiations following the fire produced an



inate hindsight,<sup>55</sup> the trier of fact may not realistically be able to view the facts without being affected by a finding as to the validity of the claim.

Since insurers are to be held answerable for their unreasonable refusals to pay claims,<sup>56</sup> it is important that they follow recommendations made by investigators and local personnel conversant with the facts. In several cases, the local office investigated the claim and recommended payment of the claim to the home office, which refused to pay.<sup>57</sup> Documentation of such recommendations can be fatal to the insurer's defense to the plaintiff's allegations of bad faith.

## V. PUNITIVE DAMAGES

The cases have made it clear that a showing of a breach of the implied covenant to deal fairly will not automatically result in an award of punitive damages.<sup>58</sup> To be subject to punitive damages, the defendant "must act with intent to vex, injure or annoy, or with a conscious disregard of plaintiff's rights."<sup>59</sup> This intent can be shown by circumstantial evidence.<sup>60</sup> The question becomes whether the insurer's

offer from defendant . . . of almost twice the amount ultimately found by the court to be due." *Id.* at 183-84, 119 Cal. Rptr. at 663.

55. *See, e.g., Austero v. National Casualty Co.*, 84 Cal. App. 3d 1, 148 Cal. Rptr. 653 (1978). "The reasonable or unreasonable action by the Company must be measured as of the time it was confronted with a factual situation to which it was called upon to respond." *Id.* at 32, 148 Cal. Rptr. at 673.

56. *See* 53 OKLA. B.J. at 1902-03 (interpreting the standard as a lack of good faith rather than affirmative bad faith).

57. *See, e.g., Richardson v. Employer's Liab. Assurance Corp.*, 25 Cal. App. 3d 232, 102 Cal. Rptr. 547 (1972) (overruled as to the requirement that emotional distress be severe in order for recovery to be proper in *Gruenberg v. Aetna Ins. Co.*, 9 Cal. 3d 566, 581, 510 P.2d 1032, 1042, 108 Cal. Rptr. 480, 490 n.10 (1973)) (the local office determined that the automobile accident was caused by the negligence of an uninsured motorist; the home office had a policy that uninsured motorist claims should be paid only as a last resort and refused prompt payment); *Mustachio v. Ohio Farmers Ins. Co.*, 44 Cal. App. 3d 358, 118 Cal. Rptr. 581 (1975) (the investigator hired to look into the fire determined that the claimant had nothing to do with the arson; nonetheless, the insurance company's representative insinuated that plaintiff had set the fire).

58. *See Austero v. National Casualty Co.*, 84 Cal. App. 3d 1, 27, 148 Cal. Rptr. 653, 670 (1978) ("[T]he measure of damages . . . includes both economic losses and compensation for emotional distress, and, in appropriate circumstances, exemplary damages."); *McCorkle v. Great Atl. Ins. Co.*, 637 P.2d 583, 588 (Okla. 1981) ("In qualifying our approval of punitive damages, with the words 'in a proper case' and 'may', we reject appellant's argument that *Christian* stands for our indiscriminate approval of punitive damages."); *Christian v. American Home Assurance Co.*, 577 P.2d 899, 901 (Okla. 1977) ("[P]laintiff insured may recover consequential and, in a proper case, punitive, damages.").

59. *Beck v. State Farm Mut. Auto. Ins. Co.*, 54 Cal. App. 3d 347, 355, 126 Cal. Rptr. 602, 607 (1976).

60. *Richardson*, 25 Cal. App. 3d at 245, 102 Cal. Rptr. at 556. "Actual malice must be shown in order for punitive damages to be awarded, but this malice, including malicious intent, may be

conduct was only bad enough to show a lack of good faith and fair dealing or bad enough to show an affirmative intent to vex, injure, or annoy. The determination of whether the defendant should be subjected to punitive damages is left to the trier of fact,<sup>61</sup> who is to focus on the unreasonableness of the insurer's act.<sup>62</sup> Only if it is obvious that the jury is swayed by passion, prejudice, or improper sympathy, or that the award is obviously excessive, will the award of punitive damages be overturned.<sup>63</sup>

## VI. CONCLUSION

Because of the change of standard in *Timmons*, plaintiffs may be more likely in the future to recover against insurers who have failed to deal in good faith in the settlement of claims. Greatest recoveries are likely to be damages for emotional distress and punitive damages. It is no longer necessary for the plaintiff to show severe distress or outrageous conduct when the damages for emotional distress are part of a recovery for bad faith dealing.<sup>64</sup> Punitive damages can be awarded if the conduct of the insurer is objectionable enough to warrant a finding of an intent to vex, injure, or annoy, or a total disregard for the plaintiff's rights.<sup>65</sup>

Insurance companies are subjected to a special standard of conduct in dealing with their insureds.<sup>66</sup> They do not sell a product; they sell mental security<sup>67</sup> in providing what is essentially a public service.<sup>68</sup>

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inferred from the circumstances of the case." *Id.* Malicious intent to vex or annoy was found by looking at the company's refusal to pay a claim it knew was valid. *Id.*; 53 OKLA. B.J. at 1905 ("[A] person may commit such wilful acts in reckless disregard of another's rights that malice will be inferred") (quoting from *Oden v. Russell*, 207 Okla. 570, 251 P.2d 184 (1952)).

61. 53 OKLA. B.J. at 1906. "[A] punitive damage verdict is peculiarly within the province of the jury." *Id.*

62. *McCorkle v. Great Atl. Ins. Co.*, 637 P.2d 583, 588 (Okla. 1981) ("We trust that the trier of fact will award them [punitive damages] only in a proper case, with the focus always on the *unreasonableness* of the insurer's conduct." (emphasis in original)).

63. 53 OKLA. B.J. at 1906. Factors to be considered in finding an award of punitive damages are the harm caused to society by the type of conduct the defendant has committed, and the value of restraining the defendant and deterring others from committing similar wrongs. It is reasonable, in determining the amount of punitive damages, to consider the defendant's financial condition. *Id.*

64. *Id.* at 1904.

65. *Beck v. State Farm Mut. Auto. Ins. Co.*, 54 Cal. App. 3d 347, 355, 126 Cal. Rptr. 602, 607 (1976).

66. *Christian*, 577 P.2d at 902.

67. *See Fletcher v. National Life Ins. Co.*, 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970); *Christian v. American Home Assurance Co.*, 577 P.2d 899 (Okla. 1977).

68. *Christian*, 577 P.2d at 902.

Due to their quasi-public nature, insurers are highly regulated.<sup>69</sup> A potential plaintiff must view the insurer's conduct with an eye for its reasonableness or unreasonableness in light of the insurer's place in society. Also, in dealing with terms such as "reasonable," "good faith," and "fair," a plaintiff must remain alert to the fact that these are terms that are defined differently by different persons and courts at different times.

*Stephanie L. Jones*

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69. 577 P.2d at 902.