Insurer Quota-Sharing Lessons From $112M Bad Faith Verdict

By **Jason Reichlyn and Christopher Sakauye** (May 17, 2024)

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Following the rising trend in runaway bad faith verdicts, on March 22, the U.S. District Court for the Northern District of Indiana upheld a whopping $112 million jury verdict, including $12.5 million in punitive damages against each of the seven insurers involved.[1]

The verdict and post-trial rulings in Indiana GRQ LLC v. American Guarantee and Liability Insurance Co. present some considerations for insurers that participate in quota-share programs by sharing a percentage of a loss subject to a single limit.

While the lead insurer primarily handles any claims, it is important for non-lead insurers to keep apprised of the adjustment process to the extent possible. Staying informed of factual, and relevant legal, developments provides an opportunity to address any issues that could increase the risk of a bad faith claim.

Should a bad faith claim arise, understanding the interplay between the applicable bad faith law and quota-share arrangements is critical to preventing litigation or, in the unfortunate case, weathering trial. In evaluating whether to litigate or settle a bad faith case, insurers should be mindful of how juries could award and allocate bad faith damages among a quota-share insurer group.

Alleged Bad Faith Conduct

After record-setting floods caused electrical and environmental damage to a commercial space owned by Indiana GRQ, the insurers, which covered the site under a quota-share plan, paid $2.68 million of the estimated damage.[2] GRQ, however, claimed that it was entitled to an additional $24 million.[3] Inevitably, litigation ensued.

The bad faith claim centered on the environmental damage, and specifically what the court described as the "disturbing" conduct of the insurers in dealing with Jeff Pope, an engineer hired by GRQ regarding the remediation of polychlorinated biphenyls, or PCBs, on the property.[4]

Shortly after Pope drafted his remediation plan, a representative for McLarens, the insurers' independent adjuster, allegedly began to co-opt Pope's services.[5]

During the eight-day jury trial, the insurers filed motions under Rule 50(a) of the Federal Rules of Civil Procedure, arguing that GRQ had failed to make a case for bad faith.[6] One insurer, Interstate Fire & Casualty Co., separately moved, further arguing that it could not have acted in bad faith because it did not hire Pope.[7]

The court denied the insurers' motions, finding that GRQ had presented sufficient evidence of the "turncoat" nature of Pope sufficient for a jury to find bad faith against all the insurers.[8] At the trial's conclusion, the jury found each of the seven insurers liable for bad faith and awarded $12.5 million in punitive damages against each insurer on top of a $13 million compensatory damages award.[9]

The insurers then renewed their Rule 50(a) arguments under Rule 50(b), but the court denied the motions.[10] The court highlighted communications where McLarens directed Pope to, among other things, find evidence that the PCB levels were a "historical" issue, which would result in a coverage denial.[11]

At the same time, Pope submitted a report to GRQ recommending certain levels of remediation work despite having evidence that much higher levels of remediation work would be required.[12] McLarens later retained Pope as a consultant while Pope was still under contract with GRQ.[13]

The court noted that the story then came "full circle" when McLarens asked Pope to critique GRQ's response to the environmental damage — which had been based on Pope's report.[14] The insurers had Pope meet to discuss the claim with their lawyers and then proceeded to deny coverage.[15]

The court also highlighted Pope's own testimony: "I mean the way you're characterizing my relationship here, it makes it look like I was, you know working both sides."[16]

Juries — and Courts — Don't Take Kindly to Complicity

Seeking to distance itself from the insurer group, Interstate advanced two "bystander" arguments in its motions. Interstate argued that it could not be liable for bad faith because it did not directly hire Pope.[17] Interstate further argued that it could not be liable for bad faith because Pope only consulted on the environmental damage portion of the claim, which was specifically excluded under Interstate's policy.[18]

The jury and court ultimately rejected both arguments.

Unsurprisingly, bystander arguments, like those made by Interstate, often fall on deaf ears when argued to a jury, particularly when substantial evidence reflecting good faith conduct is lacking. At best, a jury may simply ignore finger pointing and technical arguments. At worst, a jury may view them as cheap tricks and impose a harsher penalty.

And while there is some value in coordinating among a group of insurers, a non-lead insurer in similar circumstances may consider taking a more proactive approach to handling a claim, to the extent possible. For example, a non-lead insurer may request periodic updates from the lead insurer and, when appropriate, request that significant claim decisions be discussed among the insurer group.

If the circumstances warrant, retaining outside counsel may be helpful. In addition to providing legal and claim guidance, outside counsel could act in a relational capacity by liaising with the lead and other non-lead insurers.

Above all, it is important to stay abreast of claim developments and understand why certain actions are proposed to be taken — or not — during the adjustment process so that relevant input can be offered. In that way, non-lead insurers can create a record of good faith conduct that may help in defending a subsequent bad faith claim.

Know the Jurisdiction's Bad Faith Law and Trial Procedure

Under Seventh Circuit precedent, defendants that are jointly and severally liable face individual punitive damages awards that are relative to compensatory damages.[19] Here, the $12.5 million punitive damages award against each of the seven insurers fell just short of the roughly $13 million that represented the total compensatory damages award for the environmental portion of the claim.[20]

Although Interstate had no responsibility for any portion of the compensatory award, the jury still awarded bad faith damages against it.[21] The court later ruled that Interstate waived any argument about punitive damages because its original Rule 50(a) motion focused solely on Pope's conduct and failed to address the propriety of punitive damages.[22]

The court's ruling reflects the importance of knowing the jurisdiction's bad faith law and relevant trial and appellate procedure. The preservation of legal and factual matters bearing on bad faith is critical, especially as trial progresses and the scope or nature of damages shifts.

Consider the Jurisdiction's Approach to Quota-Share Arrangements

One consequence of quota-share arrangements is how damages may be awarded or allocated among participating insurers. Here, because each insurer's bad faith damages were awarded in proportion to the $13 million compensatory award, each insurer paid its share of the compensatory award but paid punitive damages based on the entire policy limit.

This seems to be at odds with the intended purpose of quota-share policies — to spread overall risk among multiple insurers and, in turn, to decrease the risk for any one insurer. Even though Interstate was not the lead insurer of the quota-share plan and had issued a separate policy with an environmental exclusion, it faced a seemingly disproportionate share of overall bad faith damages awarded.

By the court's logic, the insurers could have significantly decreased their respective exposure simply by offering separate policies with separate limits. In that scenario, any punitive damages award would theoretically be based on each insurer's alleged bad faith conduct and may be assessed relative to the individual policy limits of each insurer.

Beyond the reinsurance context, quota-share arrangements are still a relatively new development in the U.S. And for insurers seeking to minimize their exposure, quota-share arrangements may be appealing. However, the law is still catching up to these arrangements, and in the meantime, they can lead to undesirable outcomes.

Final Thought

This decision is but one in a long string of recent runaway bad faith verdicts that have become a rising trend.[23]

The potential for a runaway bad faith verdict is yet another consideration for insurers when evaluating whether bad faith cases are worth taking to trial in the first place. The insurers in this case, including Interstate, have appealed the court's decision to the U.S. Court of Appeals for the Seventh Circuit.[24]

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[1] See Ind. GRQ, LLC v. Am. Guar. & Liab. Ins. Co., No. 3:21-CV-227 DRL, 2024 U.S. Dist. LEXIS 51281, at *102 (N.D. Ind. Mar. 22, 2024).

[2] See id. at *2.

[3] See id. at *3.

[4] See id. at *16-18.

[5] See id. at *18-19.

[6] See Certain Insurers' Motion For J. As A Matter Of Law, Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. May 23, 2023), ECF No. 213; Rule 50 Motion For J. As A Matter Of Law Of Def. Interstate Fire & Cas. Co., Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. May 23, 2023), ECF No. 215.

[7] See Mem. Of Law In Supp. Of Def. Interstate Fire & Cas. Co.'s Rule 50 Motion For J. As A Matter Of Law, at 9-11, Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. May 23, 2023), ECF No. 216.

[8] See Tr. Of Jury Trial, v. 7, at 1436-40, Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. May 24, 2023), ECF No. 224.

[9] See Verdict Form, Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. May 26, 2023), ECF No. 235.

[10] See Ind. GRQ, LLC, 2024 U.S. Dist. LEXIS 51281, at *3.

[11] See id. at *19-20.

[12] See id. at *21.

[13] See id. at *24.

[14] See id. at *25.

[15] See id. at *25-26.

[16] See id.

[17] See id. at *28.

[18] See id.

[19] See Green v. Howser, 942 F.3d 772, 781 (7th Cir. 2019) ("While defendants have joint and several liability for compensatory damages, punitive damages are assessed separately against each defendant.") (citation omitted).

[20] See Ind. GRQ, LLC, 2024 U.S. Dist. LEXIS 51281, at *59-60.

[21] See id. at *31.

[22] See id.

[23] For example, last July, a jury in the U.S. District Court for the Middle District of Florida awarded bad faith damages exceeding $19 million for a claim under a policy with a $10,000 limit in Brink v. Direct General Insurance Co., which caused the trial judge to decry the "cottage industry" of manufactured bad faith claims. See Brink v. Direct Gen. Ins. Co., No. 8:19-cv-2844-30AEP, 2023 U.S. Dist. LEXIS 121665, at *2-8 (M.D. Fla. July 14, 2023). Another jury in Kentucky awarded over $14 million, even where the insurer, defended under a reservation of rights and agreed to contribute toward the underlying judgment. See Estate of Lahoma Salyer Bramble v. Greenwich Ins. Co., 671 S.W.3d 347, 349-50 (Ky. 2023).

[25] See Notice of Appeal filed by Axis Surplus Ins. Co., Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. Apr. 18, 2024), ECF No. 283; Notice of Appeal filed by Am. Guar. and Liability Ins. Co., Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. Apr. 18, 2024), ECF No. 288; Notice of Appeal filed by Interstate Fire & Cas. Co., Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. Apr. 18, 2024), ECF No. 290; Notice of Appeal filed by Ironshore Specialty Ins. Co., Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. Apr. 18, 2024), ECF No. 291; Notice of Appeal filed by Chubb Custom Ins. Co., Gen. Sec. Indem. Co. of Ariz., and Starr Surplus Lines Ins. Co., Ind. GRQ, LLC v. Am. Guarantee & Liab. Ins. Co., No. 3:21-CV-227 DRL (N.D. Ind. Apr. 18, 2024), ECF No. 293.