NEXSEN | PRUET

# Insurer's Purported Duty to Investigate a Claimant's Competency


## Related Professionals

Cheryl D. Shoun
843.720.1762
cshoun@nexsenpruet.com


## Practices

Insurance Coverage and Bad Faith

Litigation

Product Liability

Professional Liability

## Industries

Insurance

01.29.2019

More than a year ago, we examined the agonizing history of *Vanderhall*, a single case spanning several years, marked by a panoply of fact twists, struggling to achieve a finding of bad faith.[1] So tortuous was the history that even at that point we suggested the case should be a nominee if ever there were to be awards for legal drama. Recently, the Fourth Circuit delivered what is surely its curtain call. *Fowler v. State Farm Automobile Insurance Company*, 2019 WL141071 (January 9, 2019).[2]

We continue to urge the interested reader to explore the multiple decisions that culminated in the Fourth Circuit's recent opinion. Briefly, however, Vanderhall was permanently paralyzed and rendered a quadriplegic as a result of injuries sustained when, as he was riding his bike, he was struck by a truck. While Vanderhall remained unconscious, his mother misrepresented she was his guardian and retained counsel. Counsel, believing he represented Vanderhall, made an offer to settle to State Farm, which insured the at fault vehicle. In response, State Farm made a counter offer that counsel deemed a rejection of the original offer. Counsel filed suit in state court and the parties reached a settlement that included a confession of judgment in the amount of $7 million along with an assignment to Vanderhall of any bad faith claims belonging to State Farm's insureds. Vanderhall proceeded against State Farm based upon its purported bad faith failure to settle. Following removal to the district court, State Farm prevailed on its motion for summary judgment. Because Vanderhall was unconscious when counsel was hired by his mother, who was not his guardian, and thus lacked the proper authority to retain counsel or make the settlement offer, the court found there was no proper representation of Vanderhall and as a result, consequently, no legitimate offer. Consequently, with no legitimate offer, there could be no bad faith refusal to settle and the court granted State Farm's motion for summary judgment.

Following various motions, a guardian was appointed for Vanderhall and the original confession of judgment was set aside. The underlying case was tried, resulting in a $75 million verdict. Before verdict, the insureds again assigned their bad faith claims following which Vanderhall, through his

guardian, filed suit against State Farm in district court. This time, however, the claim was based upon State Farm's alleged breach of duty by failing to investigate Vanderhall's competence prior to the earlier and then invalidated settlement. Upon cross motions for judgment on the pleadings, the district court held South Carolina law establishes no duty pursuant to which a litigant must inquire into the mental competence of an adverse party. Vanderhall appealed. The case was most recently brought before the Fourth Circuit on the single question of whether State Farm had a duty to its insureds to investigate Vanderhall's competency before they entered into the original settlement.

In support of his position, Vanderhall, through his guardian, first argued State Farm had a general duty to its insureds to investigate Vanderhall's competency. It is well established that an insurer has a duty to settle a covered claim if settlement is the "reasonable thing" to do; multiple cases have found insurance companies have a general duty to approach claims in good faith, resolving them when reasonable to do so. None of those holdings, however, extend to establish any duty by an insurer to investigate the competency of a claimant, particularly where, as here, a claimant's counsel repeatedly represented to counsel and the court that the claimant was competent. Therefore, the court rejected this argument.

Vanderhall next asserted that the South Carolina Claims Act (the "Act"), creates a duty that required State Farm to investigate Vanderhall's competency. The Act establishes that insurers must adopt and utilize reasonable standards for the prompt investigation and settlement of claims and attempt, in good faith, to effect prompt and equitable resolution of claims. The Act does not, however, require an insurer to question a claimant's competency. Moreover, the Act does not provide a private right of action.

Vanderhall also argued that Rule 17(d)(6) of the *South Carolina Rules of Civil Procedure* establishes a duty requiring insurers to investigate the competency of a claimant. The court likewise rejected this argument. Rule 17(d)(6) allows any party or a court to appoint a guardian. The court refused, however, to extend that to create a duty on the part of an insurer to investigate whether a guardian should be appointed for a claimant.

Finally, Vanderhall's counsel acknowledged he had been unable to find authority to establish whether an insurer has a duty to investigate a claimant's mental competency once the insurer learns that the claimant may be mentally challenged. Consequently, counsel requested the Fourth Circuit certify that question to the South Carolina Supreme Court. Unconvinced the question required certification, the Fourth Circuit refused to do so. Faced with an unsettled question of state law, a federal court is not to routinely invoke certification. Rather, in the event there is no controlling state law directly on point, a federal court will attempt to do as the state's high court would do if faced with the same question. Here, the Fourth Circuit, seeing a clear and principled course, concluded the Supreme Court of South Carolina would not find an insurer's duty of care requires independent investigation into a claimant's mental competence when the claimant's counsel has declared the claimant's competence to the insurer and to the court. Moreover, Vanderhall did not seek certification until the district court ruled against him. Generally, a question will not be certified when the requesting party seeks it only after receiving an adverse decision.

In conclusion, the Fourth Circuit refused to find that an insurer has an independent duty to investigate the competency of a claimant, particularly when that claimant's counsel has repeatedly represented the claimant's competence. Thus, an insurer's failure to challenge representations as to a claimant's competency cannot establish bad faith.

So, it is with this opinion that the Fourth Circuit refused to expand the duty of an insurer to investigate the competency of a claimant and, without further fanfare, the curtain falls on Vanderhall's tenacious struggle to establish bad faith.

[1] *Please refer to our article of October 30, 2017.*

[2] *Unpublished opinions are not binding precedent in the Fourth Circuit.*

---

*Cheryl D. Shoun is a trial attorney and certified mediator whose experience includes construction law, insurance defense, personal injury defense, employment litigation and medical malpractice. As a frequent writer, she serves as editor for Nexsen Pruet's TIPS: Torts, Insurance and Products Blog.*