

Moody Blues? The Oregon Supreme Court's Recent Insurance Coverage Ruling May Not Be as Far-Reaching as It Seems

Thomas W. Purcell
MB Law Group



Thomas W. Purcell

In *Moody v. Oregon Community Credit Union, et al.*,¹ the Oregon Supreme Court for the first time recognized the existence of a negligence tort claim for “bad-faith” denial of insurance benefits under ORS 746.230, based on the unique facts of the case before it. Some commentators view *Moody* as a seismic shift in Oregon law.

Moody may signal the beginning of a sea change in Oregon to recognize negligence-based claims in most or all cases of bad-faith denial of insurance coverage. However, the actual impact of *Moody* may be significantly less than anticipated due to the way the majority structured its opinion and reasoning. In the meantime, defense counsel can use aspects of the decision to push back on new negligence claims for alleged unreasonable and/or bad-faith denial of coverage.

Moody's Facts Narrow the Reach of the Holding

The facts of *Moody* are relatively simple.² Plaintiff was the beneficiary of her husband's life insurance policy. He was accidentally shot and killed while on a camping trip. The insurer denied coverage because the decedent was allegedly under the influence of marijuana, citing a policy exclusion for deaths “caused by or resulting from [decedent] being under the influence of any narcotic or other controlled substance.”³

Plaintiff brought claims for breach of contract, breach of implied covenant of good faith and fair dealing, and negligence. She alleged that Oregon's Unfair Claims Settlement Practices Act provided an independent standard of care, and that defendant violated that standard of care by failing to comply with several claims-handling practices enumerated in the Act. In addition to contract damages, plaintiff alleged non-economic damages based on emotional distress and anxiety.

Moody's Procedural History

Defendant moved to dismiss plaintiff's claim for negligence on the basis that her only remedy under Oregon law was contractual, relying on a line of Oregon cases dating back to *Farris v. U.S. Fidelity and Guaranty Co.*, which had long been understood to limit remedies for breach of insurance contracts to contractual damages.⁴

The trial court granted the motion and dismissed all but plaintiff's breach of contract claim. The Court of Appeals reversed, finding that ORS 746.230, *et seq.*, provided statutory authority to support a negligence *per se* claim. The Court of Appeals based its holding on a handful of cases that had found a heightened standard of care beyond the terms of a contract that allowed negligence claims under certain circumstances.⁵ The Oregon Supreme Court affirmed the Court of Appeals' ruling on other grounds.

The Oregon Supreme Court's Analysis

The Supreme Court focused its inquiry on whether plaintiff had “alleged facts sufficient to state a legally cognizable common-law negligence claim for emotional distress damages” sufficient to support a negligence claim in the first place.⁶ The court noted that there is no established “test” for making this determination, so its analysis was necessarily case-specific.⁷

To make this determination, the court first considered whether ORS 746.230 indicated the existence of a legally protected interest and whether its prior holding in *Farris* precluded a common-law negligence claim for bad-faith denial of coverage. The majority opinion essentially side-steps *Farris*, arguing that *Farris* did not concern a “negligence” claim, but rather a breach of contract claim seeking tort damages and, therefore, its holding was not dispositive here.⁸ In declining to directly address or overturn *Farris*, the court passed up an opportunity to establish a broad cause of action for negligence in bad-faith claims, opting

instead for a case-specific analysis.

The court then compared the facts of *Moody* to those cases in which it had previously allowed recovery of “psychic injury”—i.e., emotional distress damages without accompanying physical injury— noting that it had long been reluctant to allow recovery for purely emotional harms without some accompanying physical injury. It also emphasized the need for a “limiting principle in addition to foreseeability,” which would permit such recovery in only rare circumstances.⁹ For example, the court considered *Philibert v. Kluser*, a case involving two brothers who had watched their third brother die in a collision. In *Philibert*, the “limiting principles” employed by the court held that only (1) a close family member of the person suffering injury who (2) perceives the event contemporaneously would be able to recover, thereby reducing the risk of “indeterminate and potentially unlimited liability.”¹⁰

In *Moody*, the court considered whether there were “objective indicators of possible serious emotional injury,” as in *Philibert*. The court reasoned that, because “life insurance is intended to provide peace of mind and necessary resources for a beneficiary,” an unreasonable denial “can certainly cause the beneficiary serious emotional injuries,” especially when “the spouse is dependent on the [decedent] for their financial well-being.”

The court further considered whether the interest protected is of significant importance to the public. It determined that in this case, “when life insurance proceeds enable survivors to obtain basic needs such as food and shelter, the survivors are not dependent on society for those needs.”¹¹

Based on these factors, the court held that plaintiff had alleged a legally protected interest that provides sufficient “limiting principles,” which the court defined as follows: “Plaintiff, as the surviving spouse of a deceased breadwinner, has a legally

protected interest sufficient to support a common-law negligence claim for emotional distress damages against her husband’s life insurer”¹²

Moody’s Potential Reach Remains Unknown

The court’s holding in *Moody* could reasonably be interpreted as limited to life insurance beneficiaries who are the surviving spouse of a deceased breadwinner. However, just a few sentences later, the court added, “we conclude that the insurance claim practices that ORS 746.230 requires and the emotional harm that foreseeably may occur if that statute is violated are sufficiently weighty to merit imposition of liability for common-law negligence and recovery of emotional distress.” We are left to litigate whether *Moody*’s holding is limited to beneficiaries of life insurance of a breadwinner spouse, or whether any negligent claim handling is sufficient to give rise to tort liability.

Policyholder lawyers are likely to challenge denials of coverage in all contexts. However, despite the broad language of the court’s comments on ORS 746.230, the reasoning of the opinion suggests that the court intended to limit its holding to claims involving life insurance. Indeed, the court commented “our conclusion here does not make every contracting party liable for negligent conduct that causes purely psychological damage, nor does it make every statutory violation the basis for a common-law negligence claim for emotional distress damages.” Rather, as the court noted, “[f]ew contracting parties promise to provide necessary financial resources on the death of a spouse knowing that their obligations to act reasonably in doing so is required by statute.”

When presented with a negligence claim on behalf of an insured plaintiff, defense counsel should contrast the facts of that specific case with those of *Moody* to determine whether the claim at issue

is consistent with other cases in which purely emotional distress damages have been awarded. Surely a claim for failure to pay repair costs after a car accident would not trigger the same “psychological damage” as failure to pay death benefits for a deceased breadwinner. Nor would that failure to pay trigger the same societal concerns that underpinned the reasoning in *Moody*. Additionally, defense counsel should be prepared to identify the “limiting principles”—or lack thereof—that would apply to their specific claim. Has the plaintiff identified any guardrails that would protect against the risk of “indeterminate and potentially unlimited liability”?

The court’s fact-specific analysis and narrow “limiting principles” in *Moody* seem to have little application to most insurance bad-faith claims. And by side-stepping *Farris* and declining the opportunity to establish a broad negligence claim in all bad-faith actions, the *Moody* court appears to have issued a relatively narrow opinion. This issue is sure to be hotly contested in the coming years, and while the result of *Moody* may ultimately be such a broad rule, we are not there yet.

Endnotes

1. 371 Or 772 (2023).
2. 371 Or at 775.
3. 284 Or 453 (1978).
4. 371 Or at 780.
5. Or 371 at 790.
6. Or 317 at 791-796. Justice Garrett contested this point in his dissent, arguing that the majority opinion effectively abrogates *Farris*, without undertaking the necessary analysis to do so. Or 317 at 807.
7. 371 Or at 785.
8. 371 Or at 785-789, citing 360 Or 698 (2016).
9. 371 Or at 804.
10. 371 Or at 805.