

Alert

September 29, 2020



Aggravation Time is Not Money in Florida

We've all heard the phrase: Time is Money. Sometimes, this phrase pops up in strange ways in a subrogation investigation. One example is when the insured wants to be paid for his or her time following a loss. Most recovery professionals have, at one time, faced an inquiry from an insured or an insured's representative whether the time spent on an insurance claim (or even assisting subrogation efforts) can be sought as damages from a tortfeasor. Sometimes the inquiry goes further and requests recovery of fees paid to public adjusters or other consultants. These damages have gone by many names, some more colorful than others, but, for purposes of this Alert, we will refer to them as "aggravation damages." The insured often feels his or her time spent should be reimbursed from someone. This can be a tough discussion to have with an insured, especially when you want to build a cooperative working relationship. However, the 4th District Court of Appeals in Florida recently found that administrative or inconvenience costs incurred by a plaintiff dealing with the aftermath of an accident are not recoverable. This decision provides an additional resource to use when responding to an inquiry from the insured about aggravation damages.

In *P&G Trucking of Brandon, Inc., et. al. v. Riverland Hedging & Topping, Inc. et. al.*, Case No. 4D19-1339 (August 26, 2020), the 4th District Court of Appeals in Florida recently addressed the question whether damages characterized as "business interruption damages," but more closely resembling inconvenience and administrative costs incurred in dealing with the aftermath of a trucking accident, were recoverable in tort. In *P&G Trucking*, after the trucking accident occurred, the plaintiffs sued defendants for negligence in causing the accident, which included damages for the tractor, lost profits, and "administrative" and "inconvenience" costs. On appeal, the damages at issue were the administrative or inconvenience costs that were made up of the plaintiffs' time spent overseeing matters related to the accident at issue, including time spent on cleanup of the accident scene, determining the scope of damages from the accident, meetings related to preexisting contracts impacted by the accident, and searching for a replacement tractor operator. The court held that "the time spent dealing with matters related to the accident is not recoverable as business interruption damages." The court's reasoning was that such damages normally are included within lost profits, and that plaintiffs could not seek a double recovery by characterizing these apparent costs as business interruption. The court classified these labor costs as "potential consequential loss[es]" rather than lost profits. More important, the court found that regardless of how the damages were labeled, "the loss of time in this case is not recoverable as an element of damages because the specific harm was too remote and thus not proximately caused by Defendants' negligent act." This ruling regarding proximate cause is likely to be relied upon by other courts in refusing to permit similar aggravation damages from being recoverable against a tortfeasor.

The concurrence in *P&G Trucking* by Judge Edward L. Artau is also instructive and directly relates to the issue of aggravation damages for subrogation matters. The concurrence agreed that one could not pursue "time spent addressing the effects of the accident on their business." However, it went further to compare the situation to an insurance claim: "This is no more compensable than the time that a motorist spends calling his or her insurance company and searching for a rental car or replacement vehicle after it is regrettably damaged in an accident." Judge Artau went on to explain that "all accidents cause interruptions to our personal lives and our businesses," but these interruptions are not recoverable under Florida law. The rationale of the concurrence speaks directly to the situation where an insured may want to seek aggravation damages and provides



Joseph F. Rich

Member

jrich@cozen.com
Phone: (786) 871-3941
Fax: (786) 220-0204



Richard J. Maleski

Member

rmaleski@cozen.com
Phone: (786) 871-3940
Fax: (305) 704-5955

Related Practice Areas

- Subrogation & Recovery

some guidance to be used when discussing this with the insured.

When insureds and their representatives seek a recovery for their time spent working on the insurance claim, *P&G Trucking* can be used to demonstrate that there are hurdles to seeking such damages and that they are likely not recoverable. You may read the 4th DCA's entire [opinion here](#).
