

ARIZONA APPELLATE COURT TO CONSIDER STANDARD FOR AIDING AND ABETTING BAD FAITH CLAIMS

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Iglesia v. Brotherhood
Arizona Court of Appeals
April 12, 2022
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In cases alleging bad faith against an insurance carriers, policyholders will often sue employee adjusters or contractors (independent adjusters, engineers, experts) of the insurance carrier to keep the case out of federal court. In a legal sense, policyholders sue the employee adjusters or contractors to defeat “diversity jurisdiction” necessary for the federal court to hear the case. The most common legal claim alleged against the employee adjuster or contractor is “aiding and abetting” the breach of the duty of good faith and fair dealing. In *Iglesia v. Brotherhood*^[1], the Arizona Court of Appeals will address the standard to state a claim against the employee adjuster or contractor for aiding and abetting the breach of the duty of good faith and fair dealing.

Iglesia arises out of a hail loss at a church in Phoenix, Arizona. After the loss, the insurer retained an engineering firm to evaluate the damages. After the insurer denied the claim, *Iglesia* filed suit against the insurer for breach of contract and breach of the duty of good faith and fair dealing, and against the engineering firm for aiding and abetting the breach of the duty of good faith and fair dealing. The trial court granted the engineering firm’s Motion to Dismiss, finding that *Iglesias* failed to state a claim upon which relief could be granted. The church appealed.

On appeal, the engineering firm is not challenging the state of the law for aiding in abetting in Arizona, which was pronounced in the case *Federico v. Maric*^[2]. According to *Federico*, aiding and abetting tortious conduct requires three elements: (1) the primary tortfeasor must commit a tort that causes injury to the plaintiff; (2) the defendant must know that the primary tortfeasor’s conduct constitutes a breach of duty; and (3) the defendant must substantially assist or encourage the primary tortfeasor in the achievement of the breach. Rather, in *Iglesia*, the Court of Appeals will address what is necessary under Arizona’s pleading rules to state a claim for aiding and abetting. In other words, what a plaintiff must allege in the complaint to defeat a motion to dismiss on an aiding and abetting claim.

Iglesia could prove to be an important case for insurance carriers, who typically prefer to litigate coverage and bad faith claims in federal court. If an employee adjuster or contractor is named in the suit, insurers often file motions to dismiss to remove that particular defendant, and if granted, remove the case to federal court. *Iglesia* will give both policyholders and insurance carriers better guidance on what claims can be dismissed, and consequently, what cases can be removed to federal court.

The Court of Appeals heard oral argument on April 12, 2022. ([Watch oral argument here.](#)) A decision is expected in the next several months.

[1] 1 CA-CV 20-0358

[2] 224 Ariz. 34, 226 P.3d 403 (App. 2010)

Patrick Gorman concentrates his practice in the areas of bad faith and extra-contractual liability, insurance coverage, professional liability and other general civil litigation matters. In his practice, he represents small and large insurers in bad faith and breach of contract claims, often with allegations of punitive damages, through all phases of litigation in state and federal court.

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