

## Recent Ruling May Pave the Way for “Additional Insured” Bad Faith Claims

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In the past, it was only clear that under South Carolina law, a named insured on a policy of insurance had the right to sue its insurance carrier for bad faith handling of claims. A recent ruling from federal district court Judge Richard Gergel appears to change that.

Chip Bruorton of Rosen Hagood represented a commercial framing contractor that was named as a defendant in a construction defect lawsuit arising out of the construction of a condominium project in Myrtle Beach. As is typical in the construction industry, Bruorton’s client required that its subcontractors procure policies of insurance that named the framer as an “additional insured.” When the framer was sued in the underlying defect lawsuit by the homeowners’ association, it tendered the defense and indemnity of the plaintiff’s claims to its subcontractors and their insurance carriers. When one subcontractor’s insurance company failed to step in to defend the framer—its additional insured—Bruorton’s client sued for bad faith.

The subcontractor’s insurance company sought to have the framer’s case thrown out of federal court on the grounds that additional insureds are more akin to third parties than they are to named insureds, and therefore have no standing to sue for bad faith. The court’s recent decision makes it clear that the opposite is true. In Judge Gergel’s opinion, the Court stated that there was “no apparent reason why a party identified as an [additional] insured in the insurance contract should not be able to bring a bad faith claim regarding the handling of its claim for insurance benefits brought under the insurance contract.”

“It’s certainly not final,” Bruorton said. “But it appears Judge Gergel is going to allow us to make the case to a jury that an additional insured should be allowed to bring a bad faith claim against a carrier if it is not meeting its obligations under the policy, even though they are not a named insured.” The case is currently scheduled for trial beginning on April 18, 2017.

A recent South Carolina Lawyers Weekly Article discussing the ruling can be found [here](#).