

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

FEDERATED NATIONAL INSURANCE  
COMPANY,

Appellant,

v.

Case No. 5D20-1210  
LT Case No. 05-2017-025961

RONALD BOCINSKY, JR., AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
VIRGINIA MARIE BOCINSKY,

Appellee.

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Opinion filed December 17, 2021

Appeal from the Circuit Court  
for Brevard County,  
George B. Turner, Judge.

Angela C. Flowers, Sorraya M.  
Solages-Jones and Caryn L. Bellus,  
of Kubicki Draper, P.A., Miami, for  
Appellant.

Matthew G. Struble, of Struble, P.A.,  
Ft. Lauderdale, for Appellee.

DUCKWORTH, B.F., Associate Judge,

Federated National Insurance Company ("FedNat") appeals the Final Judgment ordering that it pay interest pursuant to section 627.70131(5)(a), Florida Statutes (2020), to the insured, Ronald Bocinsky, Jr. as personal representative of the Estate of Virginia Bocinsky. FedNat contends that the trial court erred by granting the statutory interest because the insured did not obtain a favorable damages verdict upon which interest could attach. We agree with FedNat and reverse.<sup>1</sup>

In October 2016, the insured submitted an insurance claim for hurricane damage to the exterior of her property. FedNat estimated that the damage fell below the deductible, and therefore, it did not issue payment under the policy. In February 2017, the insured claimed additional damage that totaled over \$300,000. FedNat attempted to inspect the newly claimed damage in May 2017, but was not granted access into the insured's home. Eventually, the insured filed suit for breach of the insurance policy in June 2018, and, three months after filing suit, the insured filed a Civil Remedy

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<sup>1</sup> FedNat raised three additional arguments. Specifically, it argued that the trial court erred in: granting statutory interest because the insured did not plead entitlement to said interest in the complaint, admitting evidence regarding the timeliness of a payment that FedNat issued to the insured, and in instructing the jury to consider a special interrogatory regarding the timeliness of FedNat's payment. Because we reverse based on the ground discussed in the body of this opinion, we need not address the remaining issues.

Notice against FedNat.<sup>2</sup> As a result, FedNat timely cured the Civil Remedy Notice by issuing payment for damages under the insurance policy in the amount of \$59,241.59. Despite the payment, the breach of contract suit proceeded to trial.

At trial, the insured claimed that she was entitled to interest pursuant to section 627.70131(5)(a), because FedNat did not issue payment within ninety days from the date that she filed the February 2017 claim, as required by that statute. FedNat responded that the insured was not entitled to interest because she failed to plead entitlement to statutory interest in the complaint. Over FedNat's objection, the trial court submitted to the jury a special interrogatory asking whether FedNat's payment was timely. It also submitted a verdict form asking the jury if the insured proved that her damages exceeded the amount already paid by FedNat. The jury answered both questions in the negative. Thereafter, the trial court issued a Final Judgment in favor of FedNat as to damages, and it issued a separate Final Judgment as to interest only, ordering that FedNat pay the insured \$3,218.21 in interest for delaying its payment.

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<sup>2</sup> Section 624.155, Florida Statutes (2020), permits an insured to bring a separate cause of action against an insurer for bad faith practices and requires an insured to give notice of the claims sixty days prior to filing suit.

"A claim becomes liquidated and susceptible of bearing prejudgment interest when a jury verdict has the effect of fixing the amount of damages." Citizens Prop. Ins. Corp. v. Nunez, 194 So. 3d 1064, 1069 (Fla. 2d DCA 2016) (citing Berloni S.p.A. v. Della Casa, LLC, 972 So. 2d 1007, 1011 (Fla. 4th DCA 2008)). Once a jury verdict liquidates the damages recoverable from a contractual claim, interest may be awarded from the date that the payment was due. Id. As FedNat argues, the jury rendered a defense verdict finding that FedNat did not owe the insured any damages in excess of the amount that FedNat had already paid prior to trial. Therefore, because the insured did not obtain a verdict fixing an amount of damages that she is entitled to recover from FedNat, the verdict could not bear prejudgment interest. See id.; see also Sack v. Bamberg, 81 So. 3d 610, 611 (Fla. 3d DCA 2012) ("We affirm the trial court's denial of prejudgment interest in this case as no damages were awarded in Plaintiff's favor."). Thus, it was error for the trial court to award interest under this statute.

For this reason, we reverse the Final Judgment ordering FedNat to pay interest and instruct the trial court to enter an amended Final Judgment in favor of FedNat and against the insured on the prejudgment interest claim.

REVERSED with Instructions.

LAMBERT, C.J., and EDWARDS, J., concur.