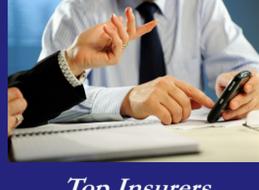


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Bad Faith Litigation Held Improper When Insurer Delayed Payment Until Receiving Demand Letter from MSPRC

The recently-released opinion in *Wilson v. State Farm Mutual Automobile Insurance Company* (U.S. Dist. Ct. W. Kentucky, 3:10-CV-256 -H) suggests the courts are *finally* starting to appreciate the frustrations of the MSP recovery process and the additional risks it imposes on settling insurers and self-insureds. *[Please email me if you want a copy of the opinion.]*

Wilson v. State Farm involved a bad faith claim filed by an insured who had grown frustrated while waiting to receive the recovery Demand Letter from the MSPRC, and wanted to force the insurer to pay the full amount of the uninsured motorist settlement into an escrow account immediately. Interestingly, two months after the plaintiff filed his bad faith suit, the recovery Demand Letter arrived from the MSPRC and the very next day State Farm issued separate checks payable to Medicare, with the remainder to the plaintiff. However, by that time both the plaintiff and State Farm had filed Motions for Summary Judgment in the bad faith action, each asking the Court to rule in their favor as a matter of law.

The federal district court judge ruled that State Farm did not act in bad faith by waiting to determine the amount of the Medicare lien before paying uninsured motorist (UM) policy proceeds. In considering whether State Farm's actions in delaying payment were reasonable, the Court looked to the MSP statutes and recognized that insurers have additional exposure to Medicare if full reimbursement is not made. The Court stated:

It appears that Plaintiff has the primary responsibility to repay Medicare. 42 C.F.R. §411.24(h). However, State Farm is absolutely liable to Medicare should Plaintiff not satisfy the Medicare lien from his settlement funds. 42 C.F.R. § 411.24(i)(1) (stating "If Medicare is not reimbursed ..., the primary payer must reimburse Medicare even though it has already reimbursed the beneficiary or other party."). Moreover, State Farm may have an obligation to protect Medicare's lien under the Medicare Secondary Payer Act and its corresponding regulations. See 42 U.S.C. §1395y (b)(2) and 42 CFR § 411.24(i)(1). For State Farm to consider these obligations seems responsible. *Wilson v. State Farm* at p. 3-4.

The Court concluded the insurer had "sound reasons" to wait for Medicare to determine the amount of its recovery demand, and was taking "reasonable precautions to protect itself from overpayment." *Id.* The plaintiff in *Wilson* had argued the insurer acted "in pure self interest and that such overriding self interest coupled with the delayed settlement payment could constitute bad faith." The Court, however, rejected this argument finding as follows:

The Court concludes that to comply with federal law and to protect its own legitimate interest against overpayment is reasonable and certainly is not in bad faith. Defendant did not delay payment in order to pay less or harass Plaintiff. [Nor was there any evidence the insurer was delaying] to "extort a more favorable settlement or to deceive the insured with respect to the applicable coverage." (citation omitted). While it may serve Defendant's self interest to comply with federal law, such action was not bad faith, especially when Plaintiff apparently refused to cooperate with Defendant's attempts to pay the claim more quickly. These undisputed facts cannot constitute bad faith on State Farm's part. *Wilson v. State Farm* at p. 4-5.

Wilson v. State Farm makes clear that although Medicare's current recovery process may be slow and frustrating, it is not bad faith for an insurer to comply with federal MSP law and protect itself against the risk of excess exposure by waiting for the MSPRC recovery Demand Letter to arrive so that the proper amount can be repaid promptly to Medicare, and the remainder can be paid promptly to the claimant.

Clearly, in our new world of waiting (sometimes a lot longer than we want) for MSPRC Demand Letters, this case supports Insurers' decisions to withhold payment of settlement until federal law is complied with. Hopefully, this case will put to rest the "bad faith" litigation and threats of litigation in Kentucky for the delay in payment.

***For additional information on Civil Litigation Issues in Kentucky,
please contact TAMMY MEADE ENSSLIN at 859-963-9049.***

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