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The Bad Faith Sentinel

Standing guard on developments in the law of insurance bad faith around the country

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District of Colorado Sinks Insurer's Motion for Summary Judgment on Bad Faith Claim Where Insurer Allegedly Failed To Timely Investigate Available Coverage for Boating Accident

Guyaux-Mitchell v. Old United Cas. Co., No. 13-CV-1132-WJM-KMT, 2015 WL 535563 (D. Colo. Feb. 9, 2015).

Insurer's motion for summary judgment denied where insurer waited for nearly two years to pay medical benefits to claimant who lost her leg in a boating accident.

On June 19, 2012, Janice Guyaux-Mitchell was floating on an inflatable kayak on Lake Powell in Utah. The kayak was tethered by a rope to a houseboat. As Ms. Guyaux-Mitchell was floating off the houseboat's stern, a powerboat backed into the kayak, shredding the kayak and severing Ms. Guyaux-Mitchell's left leg below the hip.

Ms. Guyaux-Mitchell recovered the limits of the powerboat owner's umbrella insurance policy, but the proceeds were insufficient to cover her injuries. She then sought medical payments benefits and underinsured boater ("UIB") benefits under the policy insuring the houseboat, which was issued by Old United Casualty Company ("Old United"). Old United did not pay Ms. Guyaux-Mitchell the medical payments limits until June 3, 2014, and it refused to make any payments for UIB benefits.

Ms. Guyaux-Mitchell sued Old United for bad faith, breach of contract, and Colorado statutory claims. She alleged that Old United had acted in bad faith by failing to timely investigate and award medical benefits and by refusing to pay the UIB benefits. Old United filed a motion for summary judgment.

The U.S. District Court for the District of Colorado denied Old United's motion as to the bad faith claim. While Ms. Guyaux-Mitchell argued that she made a claim for medical payments on July 31, 2012, Old United contended that such a claim was not made until February 12, 2014, and that Old United had thereafter investigated coverage and paid the full limit for medical payments.

In rejecting Old United's argument, the court pointed to the deposition testimony of Old United's adjuster. The adjuster testified that a claim for benefits under the policy had been made to him on July 31, 2012, and that the insurer has a responsibility to investigate all coverage that may be available under the policy. The court held these facts warranted denial of Old United's summary judgment motion because "a reasonable jury could find that Defendant's conduct was unreasonable, and that Defendant knowingly or recklessly disregard[ed] the validity of Plaintiff's claim." For the same reasons, the court also denied Old United's motion with regard to Ms. Guyaux-Mitchell's Colorado statutory claims, which provide an

additional cause of action against an insurer that has unreasonably delayed or denied a claim.

The court, however, granted Old United's motion as to the refusal to pay UIB benefits. According to the terms of the policy, such benefits were available "only to persons who are injured while on, boarding, or leaving the covered yacht," the definition of which expressly excluded "personal watercraft." Noting that plaintiff was not on the houseboat when the accident occurred but instead on a kayak merely tethered to the houseboat, the court agreed with Old United that Ms. Guyaux-Mitchell was not entitled to UIB benefits.

Eastern District of Pennsylvania Grants Summary Judgment for Insurer on Bad Faith Claim Arising From Denial of Coverage Under Homeowners Policy

Henriquez-Disla v. Allstate Prop. and Cas. Ins. Co., No. 13-284 (E.D. Pa. Feb. 10, 2015).

U.S. District Court for the Eastern District of Pennsylvania grants summary judgment for insurer on bad faith claim where Plaintiffs failed to show by clear and convincing evidence that insurer lacked a reasonable basis in denying coverage for losses resulting from theft and fire.

Plaintiffs sued Allstate for breach of contract and bad faith after Allstate denied coverage for losses resulting from a theft and a fire in a home owned by Plaintiff Disla and insured by Allstate. Allstate filed a counterclaim for insurance fraud based on alleged misrepresentations made by Plaintiffs. Allstate moved for summary judgment on Plaintiffs' claims and its own claim for insurance fraud, and Plaintiffs moved for summary judgment on Allstate's counterclaim. The court granted Allstate's motion with respect to Plaintiffs' bad faith claim and denied the remainder of the motions.

Plaintiffs premised their bad faith claim on the denial of benefits, the investigatory methods used, and Allstate's alleged use of Mr. Disla's language barrier as a pretext to deny coverage for losses arising from a theft and a fire in Mr. Disla's home, both of which occurred over a seven day period in January 2012. In support of their bad faith claim, Plaintiffs principally relied on Allstate's concessions that it had no basis

to conclude that the Dislas were responsible for the fire or the theft that occurred in Mr. Disla's home. Allstate argued that Plaintiffs had failed to produce any evidence that Allstate acted unreasonably or in bad faith in denying coverage.

The court explained that to succeed on a bad faith claim under Pennsylvania law, "a plaintiff must establish that the insurer did not have a reasonable basis for denying coverage and the insurer knew or recklessly disregarded its lack of a reasonable basis when it denied coverage." The court further explained that a plaintiff must establish bad faith by clear and convincing evidence, and that "[t]he standard of review is critical because it heightens a plaintiff's burden in opposing a motion for summary judgment" (internal quotations omitted). An insurer may defeat a bad faith claim "by showing that it conducted a review or investigation sufficiently thorough to yield a reasonable foundation for its action" (internal quotations omitted).

The court found here that the Plaintiffs had not presented evidence sufficient to show that Allstate lacked a reasonable basis for denying their claims. Allstate investigated the claims and conducted examinations under oath of both Plaintiffs. The investigation yielded numerous inconsistencies concerning, among other things, Plaintiffs' residence at the location, Plaintiffs' whereabouts when the fire broke out and how Plaintiffs learned of the theft. The court cited to a similar case in which Allstate relied on material misrepresentations in denying homeowners coverage for losses resulting from a fire. In that case, the court found that the inconsistencies revealed during the investigation of the fire precluded a finding that Allstate

acted without a reasonable basis when it denied coverage, and therefore precluded a finding a bad faith, even though the plaintiffs had adduced evidence sufficient to create a genuine issue of material fact on whether Allstate breached its duty to pay the fire loss claim. Similarly, the court concluded here that "[a]lthough there may be explanations for the inconsistencies, including a language barrier, there were sufficient contradictions in the testimony to justify Allstate's decision." As a result, the court ruled that Plaintiffs had not demonstrated that Allstate denied their claim in bad faith, and granted Allstate's motion with respect to Plaintiffs' bad faith claim.

Third Circuit Denies Intervention in Bad Faith Dispute Despite Assignment of Rights Under Policies at Issue

Charter Oak Ins. Co. v. Maglio Fresh Foods, et al., No. 14-4094, (3d Cir. Feb. 12, 2015).

The U.S. Court of Appeals for the Third Circuit denies motion to intervene where intervention would prejudice the parties and the interests of the proposed intervenor were already sufficiently represented.

This action arises out of a dispute between two food companies, Maglio Fresh Foods ("Maglio") and Leonetti's Frozen Foods, Inc. ("Leonetti's"), over the sale of frozen stromboli. For a number of years, Leonetti's acted as Maglio's private label producer. The parties ended their private label agreement in 2007. Leonetti's subsequently filed suit against Maglio, alleging that Maglio was selling an inferior stromboli product under Leonetti's brand name.

Maglio had a primary insurance policy with Charter Oak Insurance Company ("Charter Oak") and excess and umbrella coverage with American Guarantee and Liability Insurance Company ("American Guarantee"). Maglio tendered Leonetti's claims to Charter Oak, and Charter Oak agreed to defend subject to a reservation of rights. After several jury verdicts were entered in Leonetti's favor, Leonetti's and Maglio ultimately entered into a settlement agreement whereby Maglio assigned its rights under both the Charter Oak and American Guarantee policies to Leonetti's. Charter Oak was not involved in the settlement negotiations, but subsequently filed a motion to deposit the policy limits under its policy with the court, in a good faith effort to settle with Leonetti's.

When American Guarantee denied Maglio's claim for coverage under the excess and umbrella policy, Maglio sued American Guarantee for bad faith in the Eastern District of Pennsylvania. Maglio further asserted that American Guarantee acted in bad faith by refusing to secure an appellate bond for Maglio so that Maglio could appeal the denial of certain post-trial motions it had filed in the underlying Leonetti's action, as well as certain adverse verdicts entered against it. The Eastern District concluded that American Guarantee's obligation, if any, would only be triggered in the event that Maglio's primary insurance was exhausted by the payment of covered claims. Because Maglio could not show by clear and convincing evidence that American Guarantee acted in bad faith, judgment was entered in American Guarantee's favor.

Maglio appealed the Eastern District's decision to the United States Court of Appeals for the Third Circuit. Leonetti's, who had not been a party in the underlying bad faith action, sought to intervene under Federal Rule of Civil Procedure 24 in order to challenge Maglio's standing before the District Court and on appeal. Maglio had filed a joinder petition seeking to join Le-

onetti's in the bad faith action, but the District Court denied the motion after determining that a ruling before the imminent trial was unnecessary. The Third Circuit denied Leonetti's request to intervene, reasoning that Leonetti's interests were sufficiently represented by Maglio, and that the parties would be significantly prejudiced if forced to relitigate the case. The court further explained that Leonetti's made a "strategic decision" not to intervene in the district court because: 1) Maglio had filed

a joinder petition; 2) Leonetti's was unsure whether Maglio's bad faith claim was assignable under Pennsylvania law; and 3) the interests of Maglio and Leonetti's were "perfectly aligned" and their potential claims against the insurers were "identical." Accordingly, Leonetti's did not satisfy the high threshold for intervening for the first time on appeal, and its request to do so was denied.

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