SANDBERG PHOENIX

BAD FAITH BLOG

Insurer Twice Failed to Conduct a Reasonable Claim Investigation, Now Liable for $5.4 Million in Bad Faith Damages

AUTHOR: MEGHAN E. LEWIS

CONTRIBUTOR:

The First Circuit Court of Appeals recently upheld a $5.4 million award against a nightclub's insurer after it found the insurer engaged in unfair claim settlement practices by failing to conduct a reasonable investigation into claims by a 20-year old dancer who was seriously injured in a car accident after the nightclub allowed the dancer to drive away heavily intoxicated. The dancer, who was known to be underage, was an independent contractor at a nightclub in Worcester, Massachusetts. On the night in question, the dancer drank heavily while working at the nightclub, and after her shift ended, was escorted to her car by the nightclub's bouncer, who knew the dancer was intoxicated but nonetheless let her drive away. Shortly after leaving the nightclub, the dancer was involved in a two-car collision, resulting in significant injuries, disfigurement, and more than $375,000 in medical expenses. The nightclub's insurer referred the matter to a third-party adjuster and instructed it to perform a "limited investigation." The insurer concluded the investigation before the third-party adjuster discovered the nightclub's policy requiring dancers to encourage patrons to buy them drinks.

The dancer retained counsel and advised the insurer of her claim, accusing the nightclub of over-serving the dancer and allowing her to leave while obviously intoxicated. The insurer denied liability without further investigation and again closed its file. The dancer eventually sued the nightclub in Massachusetts state court. Though the insurer paid the dancer the limits of the nightclub's liquor liability remaining after defense expenses, the dancer did not release the nightclub. The nightclub and dancer then entered into a covenant not to sue and resulting consent judgment of $7.5 million, of which the nightclub was only obligated to pay $50,000. The nightclub also assigned its rights against the insurer to the dancer.

Subsequently, the dancer then sued the insurer in the U.S. District Court for the District of Massachusetts, alleging the insurer violated various unfair claims settlement practices. The District Court ruled in favor of the dancer, finding the insurer "twice closed its file without doing even a cursory investigation at best demonstrates willful blindness, and worse a deliberate and intentional act to avoid their statutory responsibilities." It further held the insurer's conduct deprived the dancer of "the opportunity to engage in a timely settlement process," delayed her receipt of insurance proceeds, forced her to engage in litigation which reduced available limits, and caused her to be unable pay significant medical expenses, resulting in physical and mental anguish and emotional distress. The dancer argued the $7.5 million consent judgment should be binding as damages; the District Court disagreed and assessed damages against the insurer in the amount of $1.8 million, and trebled the amount due to the insurer's conduct being "willful, knowing, and in bad faith," conduct. The District Court's total award to the dancer was for $5.4 million.

The dancer and insurer appealed. The dancer argued the consent judgment should have been awarded as damages and the basis for the treble award. The First Circuit agreed with the District Court, concluding the $7.5 million consent judgment was not an "arms-length" transaction and thus nonbinding on the court. The First Circuit also rejected the insurer's basis of appeal, finding the insurer's violation of Massachusetts unfair claims settlement practices was willful, knowing and in bad faith. The Circuit Court highlighted the insurer's termination of its initial investigation after accounts of only three of a larger number of relevant witnesses, and after the investigator explicitly told the insurer it intended to pursue additional lines of inquiry. It also noted the insurer denied the claim a second time without additional investigation, when the insurer was knowledgeable about bars and clubs subject to liquor liability laws, and the defense attorney retained by the insurer was easily able to acquire information within a matter of weeks supporting liability.

Case Citation: Capitol Specialty Insurance Corporation v. Higgins, 953 F.3d 95 (2020)