SANDBERG PHOENIX

BAD FAITH BLOG

Federal Court Rules Against Bad Faith "Set Up"

AUTHOR: SANDBERG PHOENIX

Summary: Applying Florida law, the Federal District Court found the insurer did not act in bad faith or delay tender of the policy limits when it conducted a reasonable investigation into plaintiff's injuries. Instead, the District Court found it was plaintiff who caused the delay by failing to comply with the insurer's reasonable requests for medical records.

Noonan v. Vermont Mutual Insurance Company, 761 F.Supp.2d. 1330 (M.D. FL. 2010)

This bad faith case arose from an accident in which the plaintiff was injured when his motorcycle collided with the side of an automobile operated by the insured. The insured's primary policy had a liability limit of $100,000. The insured also had an excess policy issued by defendant Vermont Mutual Insurance Company ("Vermont Mutual"), which also had a policy limit of $100,000.

Approximately two weeks after the accident, Vermont Mutual learned that its insured had received a citation for failing to yield and that the plaintiff had been in a coma since the accident. Therefore, Vermont Mutual increased its reserve to $100,000 "due to the severity of the [plaintiff] injury." Vermont Mutual also requested the primary insurer's full investigative file.

A few weeks later the primary insurer informed Vermont Mutual it was offering its $100,000 limit to plaintiff. Vermont Mutual also received a police report from the accident and noted it was "not favorable" to its insured.

After the primary insurer tendered its policy limits, Vermont Mutual received the primary insurer's investigative file which did not contain any medical records or bills. Thus, Vermont Mutual sent a letter to plaintiff's counsel which advised counsel of Vermont Mutual's policy limits and requested plaintiff's counsel to forward medical bills. On three subsequent occasions, Vermont Mutual sent follow up letters to plaintiff's counsel requesting plaintiff's medical bills and Vermont Mutual also requested that the primary insurer forward all medical bills and records on two separate occasions. Before receiving any response to its requests, Vermont Mutual learned from the primary insurer that plaintiff had filed suit against the insured and that plaintiff's hospital bills were over $250,000.

Vermont Mutual finally received “several feet” of plaintiff’s medical records and bills. The medical records suggested that plaintiff had a seizure and ran into the back of the insured’s car. Even so, approximately one week after receiving the medical records, Vermont Mutual authorized settlement for the full $100,000 policy limit and tendered its policy limit of $100,000 to plaintiff. However, plaintiff rejected the tender as untimely.

Plaintiff and the insured subsequently entered into a Consent Judgment wherein a final judgment was entered against the insured in the amount of $1,450,000. The insured assigned his bad faith claim against Vermont Mutual to plaintiff, who in turn filed suit against Vermont Mutual. Plaintiff alleged Vermont Mutual failed to timely settle plaintiff’s claim even though it knew it was a case of clear liability and that plaintiff’s damages greatly exceeded the policy limits.

Vermont Mutual filed a motion for summary judgment arguing it was not obligated to tender its policy limits in the absence of a demand and any medical information. Vermont Mutual also argued that any delay in its tender of the policy limit was due to plaintiff’s own failure to provide medical documentation despite repeated requests.

Although the District Court acknowledged that the issue of whether an insurer acted in bad faith was ordinarily a question for the jury, Florida courts have resolved bad faith claims on the pleadings where the undisputed facts allow no reasonable jury to conclude the defendant acted in bad faith. The District Court found Vermont Mutual had no obligation to its insured until the primary insurer tendered its policy limits. Thereafter, Vermont Mutual had every right to investigate and adjust plaintiff’s claim. The record showed that Vermont Mutual proceeded expeditiously to investigate the claim and within one week of the primary insurer tendering its policy limits, Vermont Mutual had requested medical documentation from plaintiff. Despite repeated requests, Vermont Mutual did not receive any medical records until over six months later. Then, only two weeks after receiving the medical records, Vermont Mutual tendered its full policy limits.

Even though Vermont Mutual knew plaintiff had been seriously injured and that its insured was “probably” at fault; Vermont Mutual did not know until it received plaintiff’s medical records whether plaintiff’s damages could reasonably be expected to equal or exceed $200,000 and thus implicate Vermont Mutual’s policy limit. Once this fact was established, Vermont Mutual promptly tendered its $100,000 policy limit.

The court found that the key to an insurer’s bad faith liability is its unreasonable delay in tendering its policy limits. The Court in Noonan found that “the delay was caused not by [Vermont Mutual’s] willful misconduct but rather by [plaintiff’s] attempt to ‘set up’ [Vermont Mutual] by withholding pertinent information concerning [plaintiff’s] claim.” The District Court went on to find that plaintiff’s counsel sought to convert the $100,000 insurance policy into a $1,450,000 windfall. The Middle District of Florida declared that this is not the purpose of a bad faith claim.

The decision signals a clear warning to claimants and their counsel to proceed with caution, at least in the Middle District of Florida, when attempting to “set up” an insurer on a subsequent bad faith claim. As we have seen time and time again, the insurer’s proactive and reasonable actions saved it from protracted bad faith litigation. In Noonan, Vermont Mutual was proactive and acted quickly in tendering its limits once it had completed its investigation. This case shows that if an insurer’s file is well documented with the proactive measures it took to adjust a claim, it can result in not only victory, but a resounding victory on summary judgment.