

## BAD FAITH BLOG

# Wisconsin Insurer's Thorough, Adequate, and Timely Investigation and Proper Settlement Negotiation Tactics Bar Bad Faith and Statutory Pre-Judgment Interest Claims

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Elizabeth Baires was in a car accident with an underinsured driver while insured by State Farm. After State Farm consented to settling with the underinsured motorist for its \$100,000 limits, plaintiff and her husband demanded that State Farm settle her claims for the \$200,000 UIM stacked limits. State Farm refused her demand, leading to plaintiff and her husband filing suit for breach of contract, loss of consortium, and bad faith refusal to pay plaintiff's claim. Thereafter, the federal district court granted State Farm's motion for partial summary judgment on the bad faith claim.

*Baires v. State Farm Mutual Automobile Insurance Company*

Plaintiff had multiple pre-existing conditions. State Farm investigated and analyzed which part of her post-accident medical problems were "the natural progression of her pre-existing conditions" and which parts were "new injuries." To help with that determination, State Farm retained a doctor to review the records and required an independent medical examination with an orthopedic spine specialist. State Farm also deposed plaintiff's treating doctor whose opinions at deposition were not nearly as strong as his records suggested.

State Farm's employees, after evaluating the medical records, the IME results, and the review by another physician, determined a range of value for plaintiff's injuries. The court further noted State Farm paid the \$10,000 medical payments coverage limits. After several attempts to negotiate the claim for less than the \$200,000 limit, plaintiffs' counsel demanded that State Farm pay its \$40,000 offer or provide a "prompt reasonable explanation of the basis in the policy contract or applicable law for denial of" the UIM claim.

The parties disagreed whether State Farm's initial offer had been \$0 or \$5,000. After suit was filed, State Farm "made an advance payment of \$5,000 under the policy's UIM coverage," consistent with its typical business practice whenever there is a "*bona fide impasse*" in first party UIM claim negotiations.

Wisconsin's bad faith refusal to pay claims sound in tort instead of contract. To prevail, the insured must establish:

"(1) There was no reasonable basis for denying or delaying payment of the claim and (2) the insurer acted with knowledge or reckless disregard for the lack of a reasonable basis." *Anderson v. Continental Ins. Co.*, 271 N.W.2d 368, 374 (Wis. 1978).

Wisconsin courts must determine whether "a claim was investigated appropriately and whether the results of the investigation were evaluated and reviewed reasonably. *Id.* Whenever "an insured's claim is 'fairly debatable' either in fact or law," there is a "reasonable basis for denying the claim, and an insurer cannot have denied the claim in bad faith." The federal judge evaluated plaintiffs' bad faith claim under those standards. He concluded there were several component parts to plaintiff's claim. Whether considered alone or in combination, "they fall markedly short of establishing" that State Farm's denial lacked a reasonable basis for denying their claim. For example, the court concluded that State Farm properly relied on Dr. Noonan's opinions. The doctor concluded that the accident "caused only a temporary aggravation of [plaintiff's] conditions" and that most of her "ongoing healthcare needs are related mostly to the natural progression of her conditions, not the accident," which established that the issues were fairly debatable. Accordingly, plaintiffs could not rely upon a conflict between two physicians to establish a claim for bad faith. The fact that plaintiff's doctor himself agreed "that reasonable physicians could disagree as to the cervical radiculopathy diagnosis," meant that the claim was fairly debatable.

In addition, the court carefully evaluated plaintiffs' claims that delays between the presentation of the claim and when State Farm offered \$40,000 to settle the claim demonstrated State Farm's bad faith. The court rejected plaintiffs' position concluding that it takes time to "conduct[] a thorough investigation." The court further noted that the single longest delay throughout the entire process was plaintiffs' attorney's "six-month delay in responding to State Farm's \$40,000 compromise offer." The court stated it was appropriate for State Farm to have Dr. Noonan conduct an IME. Furthermore, State Farm sought Dr. Noonan's advice before it was sued, which was not bad faith conduct.

The court also concluded State Farm was not required to offer the top value of its range of values as its first offer. The Supreme Court of Wisconsin has held “some breach of contract by an insurer is a fundamental prerequisite for a first party bad faith claim against the insurer by the insured.” State Farm was not required to make an advance in order to keep from breaching the contract, even though it did make such an advance after suit was filed. Rather, State Farm consistently contended it owed plaintiffs nothing. “Its settlement offer did not represent an admission that the claim or any portion of it was clearly valid; the offer was, like all settlement offers, simply a strategic decision to head off potential future liability. Thus, the \$5,000 compromise offer did not represent the undisputed portion of plaintiffs’ claim, and State Farm was not required to pay it to avoid accusations of bad faith.” Finally, the court also dismissed the prayer for pre-judgment interest because plaintiffs’ bad faith claim had to be dismissed with prejudice.