

BAD FAITH BLOG

Hawaii Supreme Court: The Insurer's Good Faith Claim Handling Duty Begins Before the Formal Claim Submission

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When doctors told Brent Adams that stem cell transplants were his best chance for a bone marrow cancer recovery, he and his wife worked closely with his health insurer to try to ensure coverage. They informed the insurer they intended for him to undergo two key procedures. Following these discussions, the physician submitted a precertification request for the first step of the procedure in December 2005. When this first step was successful, the insurer reminded the insured multiple times that the physician still needed to send a precertification request for the second stage, and also stated "in terms of the care plan, the goals remain appropriate and on target." However, when the second precertification request was submitted, it was denied just four days later because it was an "investigational" procedure. After a great deal of internal and regulatory actions and contradictory rulings, the recommended procedure took place, but Mr. Adams died.

The insured filed a bad faith claim against the insurer, alleging that it knew all about Mr. Adams' treatment plan and intentionally misled them about the coverage for the second step of the procedure. After Mr. Adams died, his wife argued that the insurer mishandled the claim by failing to timely inform them that the procedure would not be covered, and, thereby, breached its duty of good faith.

After multiple appeals regarding coverage of the procedure and the insurer's conduct relevant to allegations of bad faith, and remands pursuant to the same, the trial court granted summary judgment for the insurer on the bad faith claim. The intermediate appellate court affirmed, holding that the insurer timely responded to the certification request, and without a certification request, there was no claim for the insurer to process.

However, the Supreme Court of Hawai'i reversed this decision, and held that the intermediate appellate court failed to consider the insurer's conduct prior to receiving the second certification request. Under Hawai'i law, the insurer's duty to handle a claim in good faith begins with the first contact with the insured. Moreover, compliance with the insurance contract terms alone can be insufficient to avoid bad faith liability. Accordingly, the summary judgment for the insurer was vacated.

This opinion is a good reminder for insurers to be completely open and clear in their communications with insureds, starting with the very first contact relevant to the claim or potential claim. At least in Hawai'i, failure to do so could create a fact question regarding whether the insurer acted in bad faith, regardless of whether the insurer's acts were proper under the terms of the policy.

[Click here](#) for the court's decision in *Adams v. Hawaii Medical Service Association*, 450 P.3d 780 (Haw. 2019).