

BAD FAITH BLOG

Louisiana Court Tells Insurers to Err on the Side of Depositing Policy Limit into Court Registry to Avoid Statutory Penalties

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Summary: An uninsured motorist insurer's failure to deposit the undisputed part of the policy limits into the court registry was found to be arbitrary and capricious thereby entitling the insured to statutory penalties and attorney's fees.

Jones v. Johnson, 56 So.3d 1016 (La. App. 2010)

The insureds, Thomas Jones and his wife Mary, were involved in an auto accident which resulted in Mary's death. The uninsured driver who hit the Jones' motorcycle was solely at fault for the accident. The Jones filed suit against their uninsured motorist (UM) insurer, Markel American Insurance Company. Before filing suit, the insureds notified the UM insurer that the value of the insureds' damages would exceed all available policy limits. The insurer and insureds initially disagreed over the amount of the policy limits with the insurer claiming the policy was limited to \$200,000, whereas the insureds asserted that \$300,000 was available.

After suit was filed, the insureds received notice of liens from various healthcare providers, which asserted the right to recover unpaid medical expenses from the insurance proceeds ahead of the insureds. The amounts claimed by the various healthcare providers kept changing over the course of time.

The UM insurer was prepared to tender \$200,000 to the insureds; however, an issue arose as to whether to include the healthcare providers on any check tendered to the insureds. Counsel for the UM insurer asked that either the healthcare providers be included on the check or that counsel for the insureds provide a letter stating insureds would "satisfy all liens out of the unconditional tenders." In response, the insureds indicated they did not want the healthcare providers included on the check and advised that the healthcare providers' interest in the proceeds would be taken into consideration upon disbursement.

Discussions between the parties continued until the insureds notified the UM insurer that unless it made a “prompt unconditional tender into the registry of the Court,” the lawsuit would be amended to name as additional parties the healthcare provider lien holders and seek statutory penalties and attorneys’ fees against the UM insurer. Despite previously indicating it would deposit an unconditional tender into the registry of the Court to have the insureds and the healthcare providers assert their claims of the proceeds, the UM insurer failed to do so. As promised, the insureds amended the lawsuit to name the healthcare providers and assert statutory penalties against the UM insurer for failure to tender the policy limits.

After a bench trial, the trial court found that when the UM insurer received notice that the healthcare provider lien holders had been made defendants, there no longer existed any impediment to the UM insurer depositing at least the undisputed part of the policy limits into the registry of the Court. The trial court assessed a penalty of \$100,000 against the UM insurer, that amount being 50 percent of the undisputed \$200,000 in coverage limits, and awarded \$10,000 in attorneys’ fees plus costs.

Both the UM insurer and the insureds appealed. On appeal, the UM insurer argued the trial court erred in both finding that it had satisfactory proof of loss necessary to trigger a tender and in finding that the UM insurer was arbitrary and capricious in failing to deposit \$200,000 into the court registry. Under Louisiana law, a UM claimant provides satisfactory proof of loss when the insurer receives sufficient facts to fully apprise it of the following: (1) the uninsured status of the other vehicle involved in the accident; (2) the fault of the owner of the other vehicle; (3) the damages resulting from such fault; and (4) the extent of those damages. The first three factors were not in dispute. However, the UM insurer disputed it had proof of the extent of damages. It asserted it was not apprised of the amounts (over which reasonable minds could not disagree) that were due to each individual insured. Also the UM insurer asserted the lien holders were aggressively pursuing their recovery to the exclusion of the insureds and that the amounts the lien holders claimed were in dispute kept changing.

In affirming the trial court, the appeals court found it was indisputable that the insureds had incurred substantial medical expenses. The sum of the reimbursements, though inexact, for medical expenses claimed by the lien holders and the claims of the insureds easily exceeded the policy limits. The UM insurer had no basis for arguing that it did not have sufficient proof that the total claims exceeded the policy limits, according to the appeals court. The appeals court recognized the UM insurers’ concern in protecting itself from any claims by the lien holders; however, the concern could have been addressed by tendering the undisputed portion of the policy limits into the court registry thereby allowing the insureds and the lien holders to assert their respective claims to the funds.

The appeals court found that the UM insurer’s refusal to pay was not based on any good faith defense of the UM claim. The UM insurer had received satisfactory proof of loss by the time the insureds amended the lawsuit and added the lien holders as defendants. Under the applicable Louisiana statute (La.R.S.22:1892) an insurer “shall pay” the amount of a claim due within 30 days after receiving satisfactory proof of loss. The UM insurer did not comply with the statute and its failure to do so (as found by the appeals court) was primarily attributable to concerns about the lien holders, and thus was arbitrary, capricious, and without probable cause.

The appeals court was not persuaded by the UM insurer's argument that a tender made to the registry is not an unconditional tender because the insured does not have unfettered access to the funds. Citing Louisiana case law, the appeals court found that the insurer may make an unconditional tender to the registry of the court and thereby avoid the imposition of penalties and attorneys' fees in cases where there are competing claimants for the policy proceeds. The appeals court found no error in imposing penalties and attorneys' fees against the UM insurer because it had all the information it needed to know that the claim exceeded the policy limits and had no good faith defense to the claim.

However, the appeals court also affirmed the award of \$100,000 in penalties (50 percent of the \$200,000 policy limit) despite the insured's argument that the penalty should have been \$150,000 (50 per cent of the \$300,000 policy limit). The appeals court found that the UM insurer had a colorable argument that its policy limits for the accident was \$200,000 and thus the trial court was correct in determining the penalty based on this amount. The appeals court also affirmed the \$10,000 award of attorneys' fees despite the insureds' argument that a greater amount should have been awarded. The appeals court did award \$2,000 to the insureds for defense of the UM insurer's appeal.

Although not necessarily true in all states, it appears in Louisiana an insurer should tender policy limits to the court registry within 30 days of receipt of satisfactory proof of loss. This is true even if there are liens on the amount tendered. If it is clear the damages exceed the policy limits, it does not matter if there are other issues concerning who has claims against the policy. The insurer can avoid claims of bad faith in Louisiana by simply tendering the policy limits to the court registry and allow the lien holders and the insured to litigate the apportionment of the policy proceeds.