SANDBERG PHOENIX

BAD FAITH BLOG

Under Ohio law, Bad Faith Claims Can Be Brought Against Insurers Even If There Is No Basis For Coverage

AUTHOR: SANDBERG PHOENIX

Summary: James Glenn and Latia Ballard were injured in a car accident on February 6, 2001. Glenn was driving and Ballard was a passenger. Both qualified as insureds under Glenn's policy issued by Nationwide. Glenn and Ballard both submitted claims on the policy's medical benefits coverage, which provided up to $5,000 to pay for medical services. At first, Nationwide allowed Glenn's claim and issued him a check. After Glenn's attorney returned the check asking that be made out to the medical provider, Nationwide denied both Glenn's and Ballard's claims.

Ballard v. Nationwide Insurance Company

Glenn and Ballard then sued Nationwide, alleging breach of contract and bad faith denial of coverage. In the trial court's order granting Nationwide's motion for summary judgment on the breach of contract claim, the court noted that Nationwide's investigation supported a denial of the medical benefits claims. Nationwide then moved for summary judgment on the bad faith claims, alleging that coverage was fairly debatable and that the bad faith claims were dependent on the contract claims. The trial court granted this motion as well, which Glenn and Ballard appealed.

The Court of Appeals of Ohio noted the two types of bad faith claims. The first type occurs when the insurer intentionally refuses to pay a claim when the insurer knows there is no lawful basis for denial. Because this type requires the insured to first prove there was no lawful basis for denial, the bad faith tort claim is dependent on the outcome of a breach of contract claim. The second type, however, occurs when the insurer has no reasonably justifiable lawful basis supporting the claims denial. Unlike the first type, the second type does not hinge on the success of a breach of contract claim because the insured need only prove the insurer failed to determine whether its denial of coverage was reasonable.

Glenn and Ballard asserted the second type of bad faith claim since the complaint's allegations stemmed from Nationwide's inadequate investigation. On Ballard's claim, the Nationwide adjuster took no action for approximately three-and-a-half months after first receiving it. Over the next nine months, the adjuster contacted Ballard's counsel three times—twice in a phone call to the counsel's paralegal and once in a voicemail left with counsel. Summary judgment was therefore inappropriate because, whether or not the denial was justified, a jury could determine that Nationwide in bad faith refused to pay Ballard's claim without communicating with Ballard to determine if there was a basis for refusal.

The appeals court also reversed the grant of summary judgment on Glenn's claim. After Glenn's counsel returned the check to Nationwide with a request to re-issue it in the name of the medical provider, Nationwide waited ten months before denying Glenn coverage. In that time, there was some telephone contact between Glenn's counsel and Nationwide, but the claim nonetheless remained outstanding the entire time. The appeals court held this was sufficient to allow a jury to conclude Nationwide's delay in determining if there was a basis for coverage amounted to bad faith.

In his dissent, Judge Robb criticized the majority for focusing solely on the phone calls (or lack thereof) between Nationwide and the insureds. In his view, the Nationwide adjuster's actions, including review of the medical bills, review of the medical records, and various inquiries with physicians, constituted a reasonable investigation and made summary judgment proper.

Those handling claims in Ohio should be mindful of this recent court decision which reminds us of the insurer's duty to investigate thoroughly even if coverage is in question from the start.

By Aaron French and Brett Simon

French, A

Image not found or type unknown

Brett Simon

Image not found or type unknown