

# Reasonable Claims Handling Defeats Colorado Insured's UIM Bad Faith Claim

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**Summary:** Williams was injured in a car accident, settled with the at-fault driver's insurance company for the policy limits of \$25,000, and then made a claim against her own insurance policy under the underinsured motorist (UIM) provision. Her Owners Insurance Company ("Owners") policy provided \$100,000 of UIM coverage. Claiming medical expenses in excess of \$50,000 and lost wages in excess of \$60,000, she demanded the policy limits, but her demand was rejected. Williams then filed suit against Owners alleging breach of contract and both common law and statutory bad faith delay in processing her claim. The district court granted Owners' motion for summary judgment after finding that Williams failed to produce evidence showing the unreasonableness of Owners' conduct. On Williams's appeal, the United States Court of Appeals for the 10th Circuit affirmed on all counts.

*Williams v. Owners Ins. Co.*

Williams was injured in a car accident on August 25, 2008. After Williams settled with the carrier for the at fault driver she made a UIM claim against Owners and demanded the policy limits. After reviewing Williams's medical records, Owners determined that some of her injuries were pre-existing and also learned that she had been in a subsequent car accident a little over a year later. In addition, the records revealed that none of Williams's medical providers restricted her from working. In support of her lost wages claims, the only documentation Williams provided was a spreadsheet she prepared herself.

Owners initially offered to settle all claims for \$50,000 and requested additional documentation. After receiving the additional documents, Owners increased its settlement offer for \$75,000. In response, Williams demanded payment of \$75,000 pending a final settlement. Owners refused to make the payment without a release of all claims, which Williams refused to provide.

The insurance policy included a term that the amount of damages a UIM insured is entitled to recover is to be determined by an agreement between the insured and Owners, but there was no such agreement here. Williams therefore argued that Owner's reliance on this provision to justify Owners' refusal to pay violates Colorado public policy. The Court noted that public policy was only violated if Owners acted unreasonably. Because no jury could find Owners acted unreasonably, Williams could not prevail on her breach of contract claim.

Williams tried to prevail on her bad faith claims, arguing that Owners' investigation was unreasonably delayed because it did not start until over two years after being informed of the possibility of a UIM claim, that Owners refused to pay her \$75,000 as an undisputed minimum pending final resolution of the claim, that Owners failed to consult a medical professional, and that Owners' record-keeping was inadequate.

Colorado recognizes both common law and statutory bad faith claims. Common law bad faith occurs when the insurer acts unreasonably and has knowledge that it is acting unreasonably or has a reckless disregard for whether the conduct is unreasonable. The statutory bad faith test is met whenever the insurer has no reasonable basis to delay or deny the insured's claim. Both claims require the insurer to act reasonably, which is determined by objective industry standards.

Williams first attempted to show that Owners should have begun its investigation in 2009, rather than 2012. However, Williams did not provide evidence of industry standards showing that the investigation should have started as early as she claimed. Her claim that Owners should have consulted with a medical professional failed for the same reason; even though her expert witness opined that the claims representative should rely on his or her own training to evaluate medical claims, the expert said "she may or she may not." This was insufficient to prove an industry standard.

The evidence showed that 46 days elapsed between Williams's initial demand and Owners' offer of \$75,000. The Court of Appeals concluded that no reasonable jury could find that amount of time constituted an unreasonable delay.

The 10th Circuit rejected Williams's argument that Owners' failure to pay the \$75,000 as an undisputed minimum, relying on dicta from a recent Colorado Court of Appeals decision. The Colorado court noted an argument essentially the same as William's was inconsistent with Colorado law.

Finally, the Court rejected Williams's claim that Owners failed to keep sufficient records. Although her expert opined that the records-keeping practices of Owners were below the industry standard, he did not opine that there was any connection between this failure and Owners' actions toward Williams. Without such evidence, the Court concluded that Williams failed to show bad faith.

By Brett Simon

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