BAD FAITH BLOG

Nunn Won Right to Contest Whether Noodles and Its Insurer Substantially Delayed Payment of Her Compensation Claim

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Summary: Intentional obstruction of workers' compensation is a statutory remedy in Minnesota that provides relief for an unfounded refusal to pay benefits or a substantial delay in payment that is designed to induce settlement. Zurich made a number of questionable decisions in its handling of a claim and a jury question was created.

Nunn v. Noodles & Co., 674 F.3d 910 (8th Cir. 2012) (Minn.)

The plaintiff was a shift supervisor at one Noodles Restaurant when she was promoted to being a supervisor/manager at a new restaurant being opened by defendant Noodles. Despite her other plans and over her objection, she was directed to meet after hours with her new manager who was responsible for training her for the new position.

En route to the after hours meeting, she had a car/ motorcycle accident and was seriously injured. She had no health insurance, a fact known to her employer. Zurich denied the claim despite her prospective new boss saying that the meeting she was traveling to attend the meeting for "work." At the hearing on the intentional obstruction claim it came out that Zurich never disclosed the statement it had from the manager where he said the meeting was for the purposes of "work, plus additional things." Despite having this statement and an attorney's opinion that it would be "extremely difficult" to prove that the meeting was not a mandatory work related meeting, Zurich denied payment on the workers' compensation claim until there was an award by the administrative law judge 17 months after the incident.

These facts and circumstances created enough evidence to create a jury question whether Zurich was guilty of an unfounded refusal to pay or there was a substantial delay in paying benefits. The Eighth Circuit suggested that there was at least some evidence that Zurich took the case to trial before the ALJ because Nunn and her attorney would not consider settling for anything less than full value of her compensation claim. The clear suggestion was that an economic incentive overrode paying what was owed on a valid claim. Given the evidence recited in the opinion it is hard to understand why Zurich took the position it did--its own investigation showed that it was liable. The case was reversed and remanded for a trial under the clear and convincing standard whether the payment was delayed in "an outrageous and extreme, or egregiously cruel or venal manner." My guess is that the case settled after remand, despite the enhanced standard.

It is axiomatic that an insurer should act according to what its investigation discloses.