

BAD FAITH BLOG

Overall Good Faith Handling Precluded All Common Law and Most Statutory Bad Faith Contentions

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Summary: American Standard's overall good faith handling of passenger Wahlert's UIM claim entitled it to summary judgment on the common law bad faith claim and most statutory bad faith contentions. However, its delay in offering to settle for its case valuation amount presented triable issues for a jury.

Wahlert v. American Standard Insurance Company of Wisconsin

Passenger Wahlert settled her tort claims with GEICO for the \$25,000 policy limit. Thereafter she pursued UIM claims with the driver's insurer, American Standard Insurance Company of Wisconsin. American Standard evaluated the claims and determined an amount it deemed reasonable and many months later offered that amount, which was rejected by Wahlert's attorneys. Wahlert thereafter pursued her UIM claim and asserted common law and statutory bad faith claims.

The district court held there was no common law bad faith claim plaintiff could pursue. In Colorado there is a bad faith breach of insurance contract which is a common law tort. In order to succeed on such a claim, the insured must prove both that the insurer's conduct was unreasonable and also that "the insurer knew or recklessly disregarded the fact that its conduct was unreasonable." The court granted American Standard summary judgment on that claim after finding there was no evidence to suggest "American Standard knew or recklessly disregarded the (alleged) fact that its evaluation was unreasonable or that there was evidence of fraud, malice, or willful and wanton conduct." Accordingly, the claim was dismissed.

A Colorado statutory bad faith claim “requires proof that a benefit to which the insured was entitled under the policy was unreasonably delayed or denied.” If that can be shown, the plaintiff is entitled to a penalty of two times the benefit, plus the benefit itself, plus reasonable attorney’s fees and costs. The plaintiff primarily complained American Standard “unreasonably failed to evaluate” whether Ms. Wahlert sustained physical impairment or disfigurement, and that its evaluation was unreasonable because it did not include any amount of interest. The court disagreed and, for that reason, granted summary judgment regarding most of the contentions. For example, the district court judge found American Standard reasonably valued the amount owed for her injuries, reasonably relied on the opinion of an orthopedic surgeon to determine certain problems were unrelated, found it was reasonable to conclude there was no physical impairment or disfigurement and no evidence of a loss of earning capacity and properly did not include a pre-judgment interest calculation. Nevertheless, the court concluded there was an issue of fact whether it was reasonable for American Standard to wait 19 months to offer what it had already determined internally the valuation of her claim to be and whether after Wahlert filed suit it was unreasonable to fail to tender the \$8,000 settlement value it had previously determined. Because of those issues of fact, summary judgment was denied solely to allow a jury to determine whether the delays were in fact reasonable. It should also be noted the court took to task plaintiff’s “claim practices consultant” for what can be summarized as a ‘sloppy’ expert report” in which the court placed little, if any, stock. Nevertheless, summary judgment was denied to allow the case to proceed on the delay issues.

It would appear that the court generally believed American Standard handled the claim well. If American Standard would have offered what it concluded the case was worth shortly after making its determination, very likely American Standard would have been granted summary judgment on all statutory bad faith contentions.

By Anthony L. Martin

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