SANDBERG PHOENIX

BAD FAITH BLOG

Allstate Faces Difficult Illinois Discovery Rulings

AUTHOR: SANDBERG PHOENIX

Summary: Allstate insured Valentine and Christina Zagorski's home suffered a fire loss. Allstate's Special Investigation Unit (SIU) assisted with the investigation of what was ultimately concluded to be an arson fire. Allstate's retained counsel took an Examination Under Oath (EUO), and otherwise assisted with the claims handling before the claim was denied. After the denial, the Zagorskis filed suit for breach of contract, fraud, and sought extra-contractual damages for vexatious delay and refusal to pay. During the course of that litigation Allstate was ordered to disclose information through discovery, it refused, its attorney was held in civil contempt, and the matter was appealed to the Appellate Court, which then ruled on the various discovery issues, mostly in the Zagorskis' favor, but also making some rulings in favor of Allstate. The Court also admonished Allstate's counsel regarding properly responding to discovery.

Zagorski v. Allstate Insurance Company

The discovery plaintiffs served Allstate requested specific information about the number of times over five years that Illinois courts imposed attorney's fees, costs, or penalties under Illinois' vexatious delay and refusal to pay statute; the number of times Allstate had been sued for paying a fire loss claim; whether Allstate had a policy manual regarding fire loss handling; and whether any Allstate insureds had made complaints to the Illinois Department of Insurance regarding fire loss improper claims practices. They also sought specific information regarding Allstate's attorney's involvement with the claims handling on behalf of Allstate. Allstate vigorously resisted answering any of the discovery on grounds the discovery requests were overly broad, unduly burdensome, harassing, irrelevant, and protected by the attorney work product and/or attorney-client privileges. The judges, for the most part, ruled against Allstate. Eventually, Allstate and its attorney filed a motion seeking a finding of "friendly" civil contempt so those rulings could be appealed.

In evaluating the propriety of the discovery orders, the appellate court first noted §155 of the Illinois Insurance Code provides for the imposition of extra-contractual damages for an insurance company's improper claims handling. The purpose for the "extra-contractual remedy is... to make suits by policyholders economically feasible and to punish insurance companies for this conduct. The key question raised in a §155 claim is whether the conduct of the insurance company was vexatious and unreasonable." (citations omitted) The appellate court also addressed whether trial courts may consider the improper claims practices detailed in Code §154.6 when determining whether a §155 claim has merit. Although a policyholder does not have a private right of action for the improper claims practices listed in §154.6, evidence of such practices are relevant in determining whether an insured has a valid §155 claim.

The appellate court ruled it was proper for the plaintiffs to seek discovery whether in the prior five years Allstate had been cited by the Illinois Director of Insurance for improper claims practices. It also concluded generally that plaintiffs were entitled to seek by discovery whether vexatious penalties had been awarded against Allstate and whether it had been sued for failing to pay fire loss claims and whether its insureds had filed complaints with the Illinois Department of Insurance alleging improper claims practices. Plaintiffs could also discover whether it had policy manuals governing fire loss claims.

The appellate court admonished Allstate's counsel generally stating that "an attorney abuses the discovery process when [that attorney] asserts a litany of grounds for objection to discovery without any intention or any ability to defend those grounds. In the face of discovery abuses, it is incumbent upon the opposing party to promptly request relief, and it is incumbent upon the trial court to consider the request, and, where indicated, to issue orders that will discourage further abuse." Where privileges are asserted, appropriate privilege logs must be prepared. The appellate court noted the Rule 219 and 137 sanctions available to trial courts when attorneys abuse the discovery process. When a trial court is presented with a motion to rule on objections, the trial court is obligated to promptly rule. A trial court's "failure to issue a ruling, and where appropriate, to impose sanctions, constitutes an abuse of the court's discretion, and an abdication of its authority and responsibility."

After that admonishment, the appellate court ruled the discovery directed to Allstate's attorney and seeking information regarding his conduct and interactions with his client was improper. The trial court had improperly overruled Allstate's relevance objections and, for that reason, it vacated those rulings. The appellate court noted the proper fruits of that attorney's investigation had already been produced to plaintiffs.

The appellate court, thus, overruled Allstate's objections to the four interrogatories plus subparts which dealt with claims by others and its claims manual and remanded with directions that Allstate was to answer those interrogatories in their entirety." However, the objections regarding the supplemental interrogatories regarding Allstate's attorney were sustained. Finally, the appellate court vacated the contempt order, as well as the accompanying monetary sanctions.

The *Zagorski* case helps Illinois insurers and counsel identify the contours of §155 claims, as well as the proper use of alleged violations of the improper claims handling procedures detailed in §154.6 of the Illinois Insurance Code. Equally important, the *Zagorski* case is instructive regarding the use of the civil contempt procedure in seeking immediate appellate review of discovery orders. Most importantly, it assists Illinois insurers and their attorneys determine the proper discovery allowed in first party breach of contract, fraud, and vexatious refusal to pay cases.

By Anthony L. Martin

Martin_A

Image not found or type unknown