

South Dakota Provides Remedy for Deceit by Insurer

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Charter Oak Insurance was punished for willfully deceiving a claimant about coverage for her UIM claim.

Defendant Charter Oak was the commercial insurer of Billion Empire Motors, an auto dealership in South Dakota. Billion loaned a car to Peterson who had an accident that severely injured her passenger, Dziadek. Peterson had \$100,000 worth of coverage for Dziadek. Charter Oaks' claims representative contacted the lawyer for Dziadek and told him there was no coverage under the Charter Oak policy for under-insured motorists. The lawyer followed-up with a letter asking for the declaration sheet and a copy of the policy. The Charter Oak representative sent back the declaration sheet and certain excerpts of the policy indicating Dziadek was not an insured. After pursuing a number of other possible claims against other entities, the attorney for Dziadek two years later again contacted the Charter Oak representative and asked for a full copy of the policy. The Charter Oak representative responded that the policy was more than 2,000 pages long and that Dziadek's lawyer needed to request specific parts of the policy that he wanted. After requesting certain parts of the policy, the Charter Oak representative did not respond. When the request was repeated, the Charter Oak representative finally sent a full copy of the policy. After reviewing the policy the lawyer for Dziadek asked the Charter Oak representative to now confirm that Dziadek was an insured with UIM coverage. The Charter Oak representative did not respond. The lawyer filed suit against Charter Oak for breach of contract and deceit. The tort of deceit is "the suggestion, as a fact, of that which is not true, by one who does not believe it to be true." Charter Oak then paid its policy limits under the UIM coverage.

Dziadek vs. Charter Oak Fire Insurance Co.

The jury found for Dziadek - \$250,000 for additional legal fees, \$500,000 for other harm and prejudgment interest. Dziadek was also awarded \$2.75 million in punitive damages.

The Eighth Circuit Court of Appeals had no problem finding that there were sufficient facts to find that Charter Oak engaged in deceit of Dziadek and her attorney. The Court noted that deceit is separate and apart from bad faith and that claims for both deceit and bad faith were permissible actions for conduct that arose out of a contractual relationship. The Court affirmed the award and agreed with the post-verdict ruling throwing out the \$500,000 in damages for mental and emotional harm in that there was no evidence that Dziadek suffered a "physical manifestation of distress" from Charter Oak's deceit.

The Dziadek lawyer established that deceit is a remedy that can be joined with a bad faith failure to settle claim as another means to obtain extra-contractual damages in South Dakota. The Opinion illustrates the importance for insurance companies to be upfront and forthright with policy coverages and limits when interacting with claimants and their insureds.