

BAD FAITH BLOG

Detailed Record Supports Win for Insurer

AUTHOR: SANDBERG PHOENIX

Summary: Once again a detailed record of contacts with opposing counsel leads to win for insurers on bad faith claim.

Jackson v Allstate Insurance Company. 2011 Westlaw 321709 (Southern Dist. IN)

Allstate issued a policy of auto insurance to Jackson. The policy contained both medical payments and uninsured motorist coverage. Jackson had an auto accident with a vehicle driven by Martin who was insured by Illinois Farmers. The Allstate policy included underinsurance coverage. Jackson recovered the policy limits on the claim against Martin and then made a specific claim against Allstate under the underinsured motorist coverage. Jackson filed suit against Allstate when it did not pay. Included in the suit against Allstate was a bad faith claim.

Allstate moved for summary judgment on the bad faith claim and in so doing outlined the numerous times that it had been in contact with the plaintiff's attorney and the numerous requests it had made of him for medical authorizations and medical records. Based on the extensive record outlined in the opinion, the Court had little difficulty throwing out plaintiff's bad faith claim. Indiana, by statute (IC 27-4-1-4.5) sets out multiple unfair claim settlement practices including:

- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information.
- (6) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.
- (7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.
- (14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Plaintiff made four claims that in violation of I.C. 27-4-1-4.5, Allstate had acted in bad faith:

- (1) failing to pay or otherwise act on Plaintiff's claim for UIM benefits;
- (2) failing to forward the adjuster's evaluation of the claim to an "Evaluation Consultant";
- (3) delaying any decision for more than one year following the date of the original request for payment; and
- (4) failing to properly articulate the reason for its denial of Plaintiff's claim.

As to the first claim, the Court outlined that the insurer had, in fact, twice explained to plaintiff's counsel why it was not paying and as for the fourth claim, while the insurer did not cite its policy provision it was clear that it was saying the insured was not "legally entitled to recover." The second claim was about an act that is not required by Indiana regulation, statute, or common law. To the extent that there was any delay of more than one year, as outlined in plaintiff's third claim of bad faith, the delay was not caused by Allstate but instead was caused by plaintiff and plaintiff's counsel.

The Court decided it would try the breach of contract case which was based on the disputed facts of what plaintiff's injuries were worth.

By John Sandberg

Sandberg, J.
Signature found or type unknown