SANDBERG PHOENIX

BAD FAITH BLOG

Paying Just 10% of UIM Limits and Less Than 25% of Medical Expenses After a Head-On, Death-Causing Collision? No Bifurcation for You

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Summary: A head-on collision between two vehicles killed all three occupants of the at-fault vehicle and severe injuries to Steven Bass (Bass), the sole occupant of the other vehicle, which was owned by Bass' employer and covered by $1 million in underinsured motorist (UIM) benefits through Farm Bureau Financial Services (Farm Bureau). After receiving $20,000 from the at-fault driver's insurer under a $25,000 per person, $50,000 per accident policy, Bass' attorney demanded Farm Bureau's UIM policy limits of $1,000,000.

Bass v. Farm Bureau Fin. Servs., No. CV-12-00393-PHX-PGR, 2012 WL 3585206

Farm Bureau doubted Bass was wearing his seatbelt at the time of the accident, and demanded more complete medical records. Under Arizona law, non-use of a seatbelt reduces the value of a claim by the amount of the medical bills caused by such non-use. Bass and Farm Bureau each retained biodynamic experts who reached opposite conclusions regarding how Bass' hypothetical non-use of his seatbelt affected, or did not affect, the severity of his injuries. Bass' expert noted the severity of the collision, including the fact that the at-fault vehicle had airbags whereas Bass' vehicle did not, and that all three occupants of the at-fault vehicle were killed, even though two of them were belted. Farm Bureau concluded the value of Bass' UIM claim was $100,000 and paid that amount, which Bass treated as partial payment. An unsuccessful mediation followed, after which Bass filed a first-party claim for breach of contract and bad faith against Farm Bureau.

Farm Bureau moved to bifurcate the bad faith claim from the breach of contract claim, arguing a jury should first determine whether the $100,000 paid to Bass was the appropriate amount. Bass argued that an insurer can commit bad faith in the way it handles a claim, regardless of whether the amount paid is ultimately found to be the proper amount. The district court agreed with Bass' position, finding the issues involved in the two claims were too intertwined, and that "the fact that the insurer ultimately paid the claim, or ultimately offered to settle the insured's claim for an amount within the range of possibility, is not an absolute defense to a bad faith case."

The ruling here is another illustration of courts' mindfulness of the implied covenant of good faith and fair dealing owed to insureds. With over $425,000 in medical bills and a biodynamic expert's favorable opinion in-hand, Bass had a strong UIM claim and a compelling scenario involving the death of two belted, airbag-protected occupants in one of the vehicles, making Farm Bureau's seatbelt defense far from being a sure thing. Farm Bureau may have been overly optimistic in expecting the district court to bifurcate the bad faith claim after Farm Bureau paid 10% of policy limits and less than 25% of the medical bills in this scenario. The case will now proceed with the breach of contract and bad faith claims together.

By Tim Sansone

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