

BAD FAITH BLOG

\$2.5 Million EC Judgment Results from Findings of Sub-Standard Claims Handling

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Summary: Bryan Blann and Garry Reed were involved in a double fatality motor vehicle accident. Reed was insured by American Standard Insurance with whom Blann's widow, attempted to settle after the accident. When that failed, she took a judgment against Reed's estate for over \$2.5 million while agreeing not to execute judgment against the estate which assigned to Blann any rights it had against the carrier. Blann filed suit to seek a recovery of the full amount of the judgment from American Standard for negligent and bad faith handling of the insurance claim. The case went to trial before Kansas U.S. District Judge Carlos Murguia who entered judgment for \$2.536 million. After concluding that the company breached its duties to its insured and its claims handling was negligent and/or in bad faith, Blann was awarded the amount of the underlying judgment, pre-judgment interest, and an award of attorney's fees to be fixed after further hearings.

Blann v. Rogers v. American Standard Insurance Company of Wisconsin

The fatal accident involving Blann and Reed took place on January 5, 2011. The investigating trooper concluded that Reed had crossed the centerline resulting in a nearly head-on collision in Blann's lane of traffic. The evidence showed that Reed had just gotten off of work after working a 12-hour shift and Blann had braked suddenly, but Reed had been driving 70 miles an hour without braking before the collision. Blann's carrier and Reed's carrier were both member companies of the same insurance company group.

American Standard's policy limit was \$50,000. Within one week of that disclosure, counsel for Ms. Blann demanded settlement for \$50,000. That policy limit was not offered to settle the claim. American Standard sent an investigator to look at the vehicles after they had been towed, but did not go to the scene to investigate it. Shortly after the accident, the file was reassigned and the supervisor told the new adjuster he thought the American Standard insured was at fault, absent a mechanical or medical problem, and to investigate both possibilities. Neither was investigated, but scene photographs were reviewed by the adjuster who, based upon that review, concluded that Blann was at fault.

The new adjuster had no formal accident investigation or reconstruction training, but decided the claim should be denied. American Standard failed to notify its insured of the policy limits offer to settle or that it had set a reserve of \$50,000. Nor did it offer to settle for the \$50,000 liability limit even though it knew the exposure was over \$1,000,000.

After the failure to settle for the policy limit, suit was filed and the settlement demand increased to \$2,000,000. The case was reassigned to defense counsel who reviewed the file and concluded it was a defensible case. In fact, counsel for the Reed estate made a wrongful death claim against Blann which was thereafter settled. In addition, after suit was filed the claim was reassigned to a different adjuster, an attorney. He reviewed the file and concluded that the adjusters before had failed to timely communicate with the Plaintiff, failed to respond to written communications, and failed to communicate the policy limits demand and the demand to settle for \$2,000,000. He thought that it was too late to remedy those situations so he took no action trying to do so. However, he did notify his insured that the policy limit was \$50,000 and that if the damages exceeded that limit the insured might be liable for the excess. He then learned that Plaintiff was claiming \$3,000,000 in damages and communicated that information to the insured.

A couple of months after suit was filed, Blann offered to settle with the Reed estate on terms involving a jury trial waiver, an ex parte presentation of evidence to the Court on liability and damages, accepting judgment no matter the outcome, pursuing American Standard for the judgment, and releasing all claims against the Reed estate. American Standard's retained defense counsel told Ms. Rogers, the representative of the Reed Estate, that if she signed the agreement, very likely there would be no coverage. However, American Standard took no position and did not communicate to Ms. Rogers about it. Ms. Rogers' initial response was to not enter the agreement, but eventually she did and without notice to her attorneys, Plaintiff presented evidence to the District Court which entered judgment against the estate for \$2.536 million, plus costs. Thereafter, the judgment and the agreement were communicated to American Standard.

Under Kansas law, an insurance company owes its insured the duties to both act in good faith and without negligence. If an insurance company breaches either duty when defending and settling claims against its insured, it may become liable for amounts exceeding its policy limits. Plaintiff claimed American Standard violated its obligations and failed to exercise good faith and was negligent by failing to properly investigate, evaluate and consider the interests of its insured, communicate, and negotiate a settlement. The Court considered each of those claims in turn and concluded that the American Standard adjuster did not use ordinary care in her investigation and further concluded that the handling “constitutes negligent consideration of the claim—if not bad faith.” The Court further concluded that the company breached the duty to “honestly evaluate the value of an unlitigated claim based on its apparent merits or lack thereof, the possibility of liability being established, and the probable nature and extent of [the] injuries to be proved.” The Court also found that it breached its duty to communicate in good faith “on numerous occasions. Most significantly, it failed to notify its insured of the offer to settle for \$50,000.” The Court concluded that the repeated failures to communicate “with its insured about significant matters constitutes a breach of its duty to defend in good faith and without negligence.” Furthermore, the Court found that, at a minimum, the company had breached its duty to “make reasonable efforts to negotiate a settlement of claims against its insured.” In reaching that conclusion, the Court reviewed the Kansas Supreme Court’s eight *Bollinger* good faith factors. After reviewing “the *Bollinger* factors, the Court concludes that American Standard was—at a minimum—negligent in its settlement negotiations (or lack thereof).”

The Court also addressed the company’s claim that it is not liable because the insured breached the duty of cooperation under the contract. The Court, after reviewing the claims handling, concluded that “Ms. Rogers was not required to continue cooperating with American Standard after the insurer repeatedly and blatantly failed to give consideration to the Reed estate’s position. ... The severity and impact of its breaches were such that they excused performance by the insured.”

The Court disagreed with the company’s contention that it was not liable for any excess judgment because the agreement between Plaintiff and Ms. Rogers was collusive. In particular, the Court noted that the trier of fact determined liability and damages and Plaintiff agreed to be bound by whatever judgment was returned by the Court. Furthermore, the Court found that the findings at the ex parte hearing were supported by the record. Accordingly, the Court determined that “the agreement between Plaintiff and Ms. Rogers was reasonable and resulted in a reasonable verdict by the Court.”

The final factor the Court considered was causation. The Court concluded that “Ms. Rogers did not break the causal connection between American Standard’s negligent or bad faith actions and the entry of the judgment against the Reed estate.” For all those reasons, the Court entered judgment against American Standard with the Court needing to take up further calculations for prejudgment interest and attorney’s fees.

Like so many other cases in which bad faith/extra contractual damages are awarded, the Court in *Blann* found that the company had breached duties to act in good faith and without negligence by failing to conduct a proper, full, and complete investigation, failing to communicate with its insured regarding settlement demands, and the company's evaluation of the case against the insured, and failing to negotiate in a way that would protect the insured's best interests rather than acting "with indifference toward its insured's ultimate financial liability." In particular, insurers in Kansas need to evaluate the eight *Bollinger* factors which include an analysis of the (1) strength of the case for liability and damages; (2) attempts by the insurer to get the insured to contribute to settlement; (3) failure to properly investigate; (4) the insurer's rejection of advice by its own attorney; (5) failure to inform the insured of a compromise offer; (6) the financial risk at stake; (7) the fault of the insured; and (8) other factors bearing on bad faith. Insurance carriers with risk exposures in Kansas need to be aware of its lower standard of acting "in good faith and without negligence" and must be knowledgeable of the *Bollinger* factors to ensure that they are acting in good faith when investigating claims against and negotiating settlements on behalf of their insureds.

By Anthony L. Martin

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