SANDBERG PHOENIX

BAD FAITH BLOG

Pennsylvania Supreme Court Holds Pennsylvania Law Does Not Require a Policyholder to Prove Insurer's Self-Interest or Ill Will to Succeed on a Bad Faith Claim

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Insured LeAnn Rancosky, who was employed as a letter carrier for the United States Postal Service, purchased a "cancer insurance" policy from Washington National Insurance Company. Rancosky's employer automatically deducted her bi-weekly premium payments from her paycheck. The policy contained a "waiver-of-premium" provision, which excused premium payments in the event Rancosky became disabled due to cancer. The waiver provision set forth certain requirements be met, including being disabled due to cancer for a period greater than 90 consecutive days beginning on or after the date of diagnosis. Rancosky was diagnosed with cancer, became disabled, and made claims under the policy. Her claims were later denied due to an erroneous statement of disability provided by her physician, which the carrier did not follow up on despite having adequate information in its possession calling into question the physician's statement. She sued the carrier for breach of contract and bad faith under the Pennsylvania statute. The Pennsylvania Supreme Court, clarifying Pennsylvania law, held that a policyholder is not required to prove the insurance carrier's subjective ill will or self-interest to succeed on a statutory bad faith claim under Pennsylvania law.

Rancosky v. Washington National Ins. Co., et al.

Rancosky was admitted to the hospital February 4, 2003 with severe abdominal pain and was diagnosed with ovarian cancer. She underwent a course of treatment thereafter including surgery and chemotherapy. She did not return to work with the Postal Service, but did remain on its payroll for several months because of accrued vacation and sick leave. The insurance carrier continued to receive payroll-deducted premium payments from Rancosky until June 24, 2003 when she went on disability retirement, which continued her coverage through May 24, 2003.

Starting in April 2003, Rancosky began making attempts to obtain waiver-of-premium status under the policy, which would continue her coverage, claiming she had been disabled since her hospital admission in February 2003. At the carrier's request she submitted waiver-of-premium forms and the required physician's statement on November 18, 2003. However, unknown to Rancosky the physician's statement erroneously, and incorrectly, stated her date of disability started on April 21, 2003, rather than the date of her hospital admission, February 4, 2003. Believing that her premiums were waived thereafter, Rancosky made her final premium payment on June 24, 2003. Over the next two years she continued to experience recurrence of cancer, and submitted claims to the carrier.

Ultimately in early 2005, the carrier discovered that Rancosky ceased making payments in June 2003, and on January 28, 2005 informed her that her last premium was paid June 24, 2003 and so, therefore, her policy lapsed as of May 24, 2003. Rancosky asserted to the carrier that her date of disability was February 4, 2003 and continued to submit all required forms, including medical record/physician's authorizations, which would permit the carrier to obtain information necessary to verify whether Rancosky was in fact disabled effective February 4, 2003 as she claimed, or whether the date of April 21, 2003 used erroneously in the physician's statement was correct. The carrier, however, failed to conduct any investigation regarding this apparent discrepancy and continued to deny benefits under the policy.

Rancosky ultimately sued the carrier for breach of contract and bad faith under the Pennsylvania "bad-faith" statute known as "Section 8371". The trial court found that the carrier was "sloppy and even negligent" but found in its favor holding that Rancosky had failed to prove the required element of lack of reasonable basis for denying benefits under the policy, *specifically because she had failed to prove that the insurer acted out of "some motive of self-interest or ill will*." Rancosky appealed to the Superior Court who vacated the trial court's judgment as to the bad-faith claim and remanded for further proceedings on that claim.

The insurance carrier filed a petition for allowance of appeal with the Supreme Court of Pennsylvania, which was granted. The Supreme Court considered the issue of whether Rancosky had met the elements of a bad-faith claim under Section 8371, and specifically considered whether a policyholder was required to prove whether a carrier acted out of a subjective motive of self-interest or ill will in order to succeed in a bad-faith claim under the Pennsylvania Statute.

The Supreme Court considered prior decisions by it and the Superior Court , and also considered prior decisions of high courts in California and Wisconsin, in holding that policyholders are *not* required to prove that an insurance carrier is subjectively motivated out of its own self-interest or ill will towards the policyholder to recover for bad faith under Section 8371. The court held that this was so even with regard to an award of punitive damages, based on the specific phrasing of Section 8371.

In choosing to adopt the two-part test first set forth by the Superior Court in Terletsky v. Prudential Property & Cas. Co. Ins. Co., 649 A.2d 680 (Pa. Super. 1994), the Supreme Court clarified Pennsylvania law, holding that to prevail in a bad faith insurance claim under Section 8371, a policyholder must prove, by clear and convincing evidence, (1) that the insurer did not have a "reasonable basis" for denying benefits under the policy, *and* (2) that the insurer "knew or recklessly disregarded" its lack of reasonable basis in denying the claim. The court further held that although proof of an insurers subjective motive of self-interest or ill will was perhaps probative of the second prong set forth above, it "...is not a necessary perquisite to succeeding in a bad faith claim." The court went on to hold that it was sufficient to show the insurer's knowledge or reckless disregard for its lack of reasonable basis in denying the claim. The court remanded to the trial court with orders for it to reconsider whether *both* prongs of the two-prong test were met.

Insurers doing business in Pennsylvania should be aware of this decision, because it clarifies Pennsylvania law, and removes any doubt over whether a policyholder is required to prove the insurer's subjective self-interest or ill will in order to prove a bad faith claim under 42 Pa.C.S. Sec. 8371.