Dickie McCamey
ATTORNEYS AT LAW

2/6/2017 | Articles

Claims Delay Not Unreasonable, In Bad Faith, Judge Rules

An auto insurer did not unreasonably delay processing of a claim, a Pennsylvania federal judge has ruled. In *Thomas and Colleen Meyers v. Protective Insurance Co.,* No. 16-1821, M.D. Pa., 2017 U.S. Dist. LEXIS 11338, a delay in the payment of an auto claim at issue in the case was found not so unreasonable as to constitute bad faith.

Thomas Meyers was insured by a hit-and-run vehicle while working as a delivery man on Jan. 21, 2014. He filed a claim alleging serious injury with Protective Insurance Co. for uninsured/underinsured motorist benefits on April 23, 2014. Meyers sought medical expenses and wage loss of more than $120,000 on Feb. 1, 2006. He claims to have received no response from Progressive for more than three months.

On May 26, 2016, Meyers rejected a settlement offer from Protective in the amount of $225,000. Meyers later rejected an increased offer, and Protective hired counsel requesting additional time to review the claim. Protective's counsel required Meyers to complete four medical evaluations.

Meyers sued Protective in the Lackawanna County, Pa., Court of Common Pleas, stating claims for breach of contract, common law, and statutory bad faith pursuant to 42 Pa.C.S. § 8371. Protective removed the action to the U.S. District Court for the Middle District of Pennsylvania and moved to dismiss all claims including breach of "fiduciary duty," bad faith, and a loss of consortium claim.

Judge A. Richard Caputo dismissed all fiduciary claims, holding, "[u]nder Pennsylvania law, an insurer owes a duty of good faith and fair dealing toward their insureds. It is well-established, however, that there is no fiduciary duty owed to an insured in the context of an underinsured/uninsured motorist benefits."

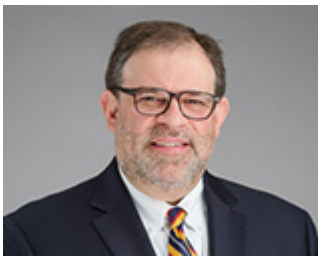
Judge Caputo also rejected the bad faith claims, including allegations that Protective's failure to communicate constituted bad faith, finding such claims unsupported. The judge found that the insurer contacted the Meyerses four times requesting information and/or providing updates on the investigation between March 9, 2016, and May 24, 2016:

> Moreover, after the first settlement offer was rejected by Plaintiffs, Defendant, within only one week, proposed a new, higher, settlement offer. Although Defendant often did not immediately respond to Plaintiffs' communications, an allegation of 'failure' to communicate is inconsistent with reality. Defendant's communications may be described as tardy, but I cannot impute bad faith or even unreasonable delay, especially in light of the fact that Defendant made a settlement offer within three-and-a-half months after receiving Plaintiffs' estimate of damages. Although '[d]elay is a relevant factor in determining whether bad faith had occurred,' [*Kosierowski v. Allstate Ins. Co.,* 51 F.2d 583, 588 (E.D. Pa. 1999)], I am unable to find precedent supporting the proposition that an insurance company's investigation of a claim lasting three-and-a-half months is unreasonably lengthy. . . . [T]here is also no evidence that Defendant failed to objectively and fairly evaluate Plaintiffs' claims, or that the settlement offer was so inadequate as to constitute bad faith.

Judge Caputo also did not find Protective's settlement offers unreasonably low:

> First, given that the damages package provided by Plaintiffs included a ‘medical lien and wage loss documentation in an amount in excess of $122,000,’ a settlement offer that is higher by nearly $100,000 than the proposed damages package is not unreasonable, and ‘bad faith is not present merely because an insurer makes a low but reasonable estimate of an insured’s damages.’ Secondly, Plaintiffs’ assertion of a verdict potential is an opinion as to the value of their claim, not an objective measure of it, and because such an assertion is nothing more than a legal conclusion, it must be disregarded. Simply put, Plaintiffs’ subjective belief as to the verdict potential of their claims cannot constitute evidence of bad faith on the part of Defendant because Defendant’s subjective belief as to the value of the claim may reasonably, and permissibly, differ.

The judge granted Protective’s 12(b)(6) motion and gave the Plaintiffs 21 days to amend their complaint.



Charles E. Haddick, Jr.
717-731-4800
chaddick@dmclaw.com
@cjhinsurancelaw
blog: badfaithadvisor.com