Consumer & Commercial Law State Bar of Texas

Western District Finds No Bad Faith For Policy Interpretation Based On Unsettled Law

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The Western District of Pennsylvania recently granted an insurer's motion for summary judgment and denied an insured's motion for summary judgment after finding that the insurer did not act in bad faith when it requested that its insured submit to an IME at a time when the validity of the IME clause in the Policy was unsettled and the subject of debate in Pennsylvania. See Loughery v. Mid-Century Ins. Co., 2022 WL 17821613 (W.D. Pa. Dec. 20, 2022).

In Loughery, the insured was involved in a motor vehicle accident. The insurer had issued an automobile insurance policy ("Policy") to the insured, which provided personal injury projection and income loss coverage. The Policy imposed the following duty on the insured: "A person claiming any coverage under this policy must also…[a]s required by Pennsylvania law, submit to physical examinations at our expense by doctors we select as often as we may reasonably require." Section 1796 of Pennsylvania's MVFRL, however, requires an insurer to obtain a court order to require a claimant for first-party medical, income loss, or catastrophic loss benefits to submit to an IME.

After the accident, the insured sought income loss benefits under the Policy. The insurer scheduled the insured for an IME without obtaining a court order. The insured did not submit to the requested IME, and the insurer ultimately paid certain portions of the insured's income loss benefits. The insured subsequently sued the insurer for statutory bad faith, alleging that the insurer requested an IME without obtaining a court order and without good cause, and therefore failed to pay the insured's income loss benefits in bad faith. The parties filed cross-motions for summary judgment.

The Court noted that, at the time of the insurer's IME request, there had been notable confusion as to whether insurers must obtain an order, upon a showing of good cause, to require a claimant seeking first party income loss benefits to submit to an IME if their policies contained an IME clause providing otherwise. While some courts found that these IME clauses were against public policy, others courts upheld such clauses. This split in authority was addressed by the Pennsylvania Supreme Court in Sayles v. Allstate Ins. Co., which held that the IME clauses were found to be against public policy.

The Court found that the IME clause in the Policy was similar to the IME clauses that were found to be against public policy in Sayles. Therefore, the Court concluded that the insurer did not act in bad faith even though its interpretation of the Policy was later found to be incorrect because the law regarding IME clauses was unclear and unsettled at the time the insurer requested an IME, because there was a split in opinion among the various courts that had considered the validity of the IME clauses in conjunction with Section 1796, and because the insurer's request for an IME was in accordance with an interpretation of the law expressed by some courts.

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