

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD SEGALL and	:	
BLAIR SEGALL, h/w	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 99-6400
LIBERTY MUTUAL INSURANCE	:	
COMPANY,	:	
Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J.

November 9, 2000

Plaintiffs Edward Segall and Blair Segall ("Plaintiff" or "Plaintiffs") filed this action pursuant to 42 Pa. C.S.A. § 8371 alleging that their insurance company, Liberty Mutual Fire Insurance Company ("Defendant" or "Liberty Mutual"), acted in bad faith when handling their underinsured motorist claim ("UIM"). Plaintiffs allege that Defendant demonstrated bad faith in three ways: (1) failure to timely investigate; (2) failure to make a timely settlement offer; (3) failure to make an adequate settlement offer.

Presently before this Court is Defendant's Motion for Summary Judgment as to all three allegations. This Court finds

that Plaintiffs failed to provide clear and convincing evidence¹ that Defendant acted in bad faith. This Court grants summary judgment on all three counts.

I. BACKGROUND

In November 1993, Plaintiff was injured by an automobile driver who had a \$50,000 insurance policy with Allstate Insurance Company ("Allstate"). Plaintiffs' alleged damages exceeded the amount covered by the Allstate policy, so Plaintiffs notified their own insurance company, Liberty Mutual, of a potential underinsured motorist claim ("UIM").² Plaintiffs settled with Allstate for \$45,000 in November 1996.

Throughout the settlement period with Allstate, Defendant made several inquiries as to the status of the suit and whether the UIM claim should be investigated. Upon settlement of the Allstate claim, Plaintiffs notified Defendant, and Defendant referred the UIM claim to its legal department for investigation and for selection of an arbitrator. In January in 1997, Defendant requested Plaintiffs' medical files from Plaintiffs' attorney, Mr. Robinson. Believing that Defendant already had

1. The Third Circuit established "clear and convincing evidence" as the appropriate standard for evaluating a claim of bad faith. See Polsell v. Nationwide Mut. Fire Ins. Co., 23 F.3d 747, 750 (3rd Cir. 1994).

2. At the time of the accident, Plaintiffs had a \$300,000 uninsured motorist insurance policy with Liberty Mutual.

possession of the documents through a prior request, Mr. Robinson did not acknowledge or respond to this request.

Plaintiff alleges that Defendant had the opportunity as of November 1996 to obtain all relevant medical records either from files maintained by another department of Liberty Mutual or from Allstate. Defendant did not have possession of this medical file until June 1997, approximately six months later.

Plaintiffs also assert that Defendant waited until November 1997 in order to conduct a more extensive investigation of Plaintiff's claim including a review of Plaintiffs' employment records, an economist's assessment, and surveillance of Plaintiffs. Plaintiffs argue it was not necessary for Defendant to wait until three weeks prior to the arbitration in order to conduct this investigation as Defendant had access to the relevant materials earlier.

Defendant's claims agents handling this case requested authorization for a \$200,000 and subsequently a \$250,000 reserve, and Defendant made a \$50,000 settlement offer on December 3, 1997, five days prior to the arbitration date. Plaintiffs never responded to the settlement offer nor made a competing demand. The case proceeded to arbitration and Plaintiffs received a net award of \$187,500. Defendant paid this award to Plaintiffs.

II. DISCUSSION

Plaintiffs assert bad faith on the part of Defendant in (1) failing to timely investigate the UIM claim; (2) failing to make a timely settlement offer; and (3) failing to make an adequate settlement offer. Defendant moves for summary judgment as to all three allegations, and this Court grants the motion on all three counts.

Plaintiffs allege facts that are strikingly similar to those considered by Judge Katz in Hartford Insurance Company v. Williams, 83 F.Supp.2d 567 (E.D.Pa. 2000) and Kosierowski v. Allstate Ins. Co., 51 F.Supp.2d 583, 588 (E.D.Pa. 1999). Finding Judge Katz's reasoning persuasive and recognizing that his holding in Kosierowski has been affirmed by the Third Circuit,³ I apply the same analysis to the facts of this case.

A. Delay of Investigation

Plaintiffs claim Defendant acted in bad faith because eleven months passed between the initiation of the UIM claim and its settlement. More specifically, Plaintiffs allege that the proceedings were delayed unnecessarily for six months on account of Defendant's failure to obtain relevant medical records.

Under the reasoning articulated in Williams, neither Defendant's behavior nor the time that it required to settle

3. Kosierowski v. Allstate Ins. Co., No. 99-1616, 2000 U.S. App. LEXIS 25588 (3rd Cir. 2000).

Plaintiffs' claim provide clear and convincing evidence of bad faith. Where an insurer knows the value of a claim and intentionally delays in making a payment, a finding of bad faith may be appropriate. See Kosierowski, 51 F.Supp.2d at 589. Here, Plaintiffs provide no evidence of such knowledge, and Defendant's assertion that the time and effort expended in the investigation was necessary to determine the appropriate amount of the award is reasonable.

Moreover, the length of the investigation fell within parameters that have been deemed acceptable by this circuit. The Third Circuit upheld the decision in Quaciari v. Allstate Insurance Company, 998 F.Supp. 578, 579-80 (E.D.Pa.), aff'd without opinion, 172 F.3d 860 (3rd Cir. 1998) finding that a period of approximately thirteen months between the initiation of a UIM claim and its settlement did not constitute bad faith absent aggravating factors. See also Williams, 83 F.Supp.2d at 572. (holding that although swifter resolution may have been possible, the insurer did not act in bad faith where it took fifteen months to resolve UIM claim).

Similarly in the case at bar, Defendant may have been able to resolve Plaintiffs' claim sooner. However, the six month delay caused by the failure to obtain the medical records most likely resulted from negligence or miscommunication but not bad faith. Additionally, only eleven months passed from the time of

the settlement with the underlying tortfeasor and the arbitration date, a length of time well within the permissible period. Therefore, the facts asserted to support the allegation of bad faith on account of the delay of the investigation are insufficient.

B. Timing of the Settlement Offer

Plaintiffs allege Defendant's decision to make a settlement offer five days prior to the arbitration date occurred so late in the process that it exhibited bad faith. However, the court in Williams held that an insurer who investigated a claim until days before the arbitration and then made a settlement offer six days prior to it did not act in bad faith. In particular, the Williams court believed the continued investigation was appropriate because a substantial amount of the claimant's alleged damages were attributable to pain and suffering. By contrast, where the amount owed to the claimant is clearly known or easily quantifiable and the insurer refuses to pay, bad faith may be found. See Kosierowski, 51 F.Supp.2d at 592.

Here, Defendants had to determine the residual impact of Plaintiffs' injuries and the value of lost earnings. Defendant was justified in conducting an investigation late into the process such that its behavior as to the timing of the settlement offer did not constitute bad faith.

C. Amount of the Settlement Offer

Plaintiffs allege that Defendant's settlement offer fell well below the amount the insurer allocated as reserve for this claim, thereby demonstrating bad faith. Even where the insurer concedes that the reserve is an estimate of the insurer's potential liability, I agree with my colleague Judge Katz that it would be unwise to "fashion a rule requiring an insurer to make an offer reflecting the reserve as soon as it is set." Williams, 83 F.Supp.2d at 576. Similarly in the case at bar, Defendant's decision to increase the reserve amount has no binding effect on the amount offered nor the actual amount that the claimant actually deserves. The reserve is merely set aside in order to protect the insurance company from being incapable of paying the claimant. Therefore, the increase in the reserve amount here does not indicate or reveal any bad faith behavior.

Moreover, Plaintiffs argue that the \$50,000 settlement offer was an all-or-nothing offer rather than a starting point for negotiation. Assuming arguendo that this fact was relevant, Plaintiffs fail to provide any evidence, beyond their own assumptions, as to this nature of the offer. As Plaintiffs did not respond to or even acknowledge Defendant's offer, they cannot effectively argue that the offer was anything but a starting point for negotiation. The claims representative responsible for communicating this offer to Plaintiffs noted, "What was I going

to do, negotiate against myself. [sic] I didn't even have a demand." Consequently, Plaintiffs provided insufficient evidence that the amount of the settlement offer constituted bad faith.

III. Conclusion

For the foregoing reasons, the Motion for Summary Judgment as to an allegation of bad faith based on a (1) failure to timely investigate; (2) failure to make a timely settlement offer; (3) failure to make an adequate settlement offer is GRANTED in its entirety.

An appropriate order follows.

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O R D E R

AND NOW, this 9th day of November, 2000, upon consideration of Defendant's Motion for Summary Judgment (Docket No. 23), Reply Memorandum of Law in Support of Defendant's Motion for Summary Judgment (Docket No. 32) and Plaintiff's responses thereto (Docket Nos. 31, 33), it is hereby ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

Judgment is entered in favor of defendant Liberty Mutual Insurance Company and against plaintiffs Edward Segall and Blair Segall.

This case is marked CLOSED.

BY THE COURT:

RONALD L. BUCKWALTER, J.