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MICHIGAN STATE MEDICAL SOCIETY

Insurance Bad Faith Claims:

An insurer which, in bad faith, fails to settle, within policy limits, a third-party liability claim asserted against its insured may be held liable for an excess judgment.Ã,Ã

City of Wakefield v Globe Indemn Co, 246:

Mich 645, 648 (1929). An "excess judgment" is a judgment entered against the insured in excess of policy limits. For example, a physician may have malpractice coverage of \$100,000 per occurrence. A claim is asserted against the physician, the case does not settle and is tried, and a judgment for \$150,000 is entered against him. Bad faith is defined as arbitrary, reckless, indifferent, or intentional disregard of the insured's interests.

Comm Union Ins Co v Liberty Mut Ins Co:Ã,Ã 426Ã,Ã

Mich 127, 136 (1986). Good faith denials, offers of compromise, or other errors of judgment are not sufficient to establish bad faith. Id. at 136-37. Claims of bad faith also cannot be based upon negligence or bad judgment, provided the insurer has acted honestly and without concealment. Id. at 137. Bad faith exists if the insurer is motivated by a desire to protect its own interests at the expense of its insured's interests, even though the insurer's actions were not in fact dishonest or fraudulent. Id.

The factors noted below may be considered in determining whether an insurer is liable for failing to settle in bad faith. This list is not exclusive, and no single factor is decisive:

1. Failure to keep the insured fully informed of all developments in the claim or suit that could reasonably affect the interests of the insured;
2. Failure to inform the insured of all settlement offers that do not fall within the policy limits;
3. Failure to solicit a settlement offer or initiate settlement negotiations when warranted under the circumstances;
4. Failure to accept a reasonable compromise offer of settlement when the facts of the case or claim indicate obvious liability and serious injury;
5. Rejection of a reasonable offer of settlement within the policy limits;
6. Undue delay in accepting a reasonable offer to settle a potentially dangerous case within the policy limits where the verdict potential is high;
7. An attempt by the insurer to coerce or obtain an involuntary contribution from the insured in order to settle within the policy limits;
8. Failure to make a proper investigation of the claim prior to refusing an offer of settlement within the policy limits;

9. Disregarding the advice or recommendations of an adjuster or attorney;
10. Serious and recurrent negligence by the insurer.
11. Refusal to settle a case within the policy limits following an excessive verdict when the chances of reversal on appeal are slight or doubtful.
12. Failure to take an appeal following a verdict in excess of the policy limits where there are reasonable grounds for such an appeal, especially where trial counsel so recommended. *Id.* at 138-39.

The conduct of the primary insurer under scrutiny must be considered in light of the circumstances existing at the time of the primary insurer's actions. *Id.* at 139.