IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION
CA 1-96-CV-189-1 (WLS)

COLEMAN J. TIDWELL,Trustee
In Bankruptcy for LARRY W. STRICKLAND

Plaintiff

Vs.

ALLSTATE INSURANCE COMPANY

Defendant

EXPERT REPORT OF TIM RYLES, Ph.D.
2075 Meadows Road
Newborn, Georgia 30056

EXPERT QUALIFICATIONS

I am the former Commissioner of Insurance, State of Georgia, for the term beginning in January 1991 and ending in January 1995. Since completing my term as commissioner, I have been a consultant on insurance matters and have been associated with other firms that provide consultation in insurance litigation. I have appeared as expert witness in both deposition and trial testimony with respect to insurance claims handling and coverage questions on behalf of both plaintiffs and defense. Altogether, I have been involved in over 100 cases since January of 1995.

During my administration as Georgia's Commissioner of Insurance, I was instrumental in obtaining adoption of the Unfair Claims Practices Statute, a Model Statute developed by the National Association of Insurance Commissioners ("NAIC") in the State of Georgia. This statute appears at Sections §33-6-30 through §33-6-37 of the Georgia Insurance Code. I also served as Vice Chair of the NAIC's Market Conduct and Consumer Affairs Committee during the period that regulators were developing standards governing market conduct of insurers. Additionally, I have appeared as either expert witness or deponent in a number of cases involving an insurer's duty under claims settlement standards, including bad faith actions, in Georgia and in other jurisdictions. I have also appeared as an expert witness in several cases involving insurance contract interpretation and the rules pertaining to such interpretation. These activities include representation of Trustees in Bankruptcy. A current resume appears in Exhibit B.

BASIS FOR EXPERT OPINIONS

I have been asked to express an opinion in the above captioned case on behalf of the Trustee in Bankruptcy as plaintiff. Specifically, Plaintiff has requested that I provide an opinion with respect to whether Allstate Insurance Company's ("Allstate") claims-handling practices deviate from reasonable and recognized claims-handling standards. The opinions expressed herein are based upon my review of the documents cited in the body of this report, case documents identified in Exhibit A, my experience both as an insurance regulator and an insurance litigation consultant, as well as my training and general knowledge. I reserve the right to amend my opinions should new evidence establish reasons for doing so.

BACKGROUND

This case involves the duty of an insurer in the context of a third party claim for indemnification and defense under an automobile insurance policy issued by Allstate to Larry W. Strickland. Succinctly stated, the insured's vehicle collided with another vehicle at an intersection resulting in bodily injury to a passenger in the second vehicle. Following Allstate's initial determination that its insured was not liable for the damage, Allstate refused to settle the case and litigation ensued. The trial jury returned a verdict of almost $65,000 against Larry Strickland. This verdict was almost $40,000 above the policy limits of $25,000. Pursuit of this verdict's reversal proved unsuccessful in Georgia appellate courts.

OPINIONS

While subject to essentially the same standard rules of construction as other contracts, insurance contracts are nevertheless distinguishable. For example, they are not only governed by the usual extra-contractual duties of good faith and fair dealing but are also described in both legal and industry sources as contracts of "utmost good faith." (See *Georgia Agents' Licensing Study Manual, Property & Casualty*, 7th Edition, 1993, I-22 and Eric Wiening and Donald S. Malecki, *Insurance Contract Analysis*, American Institute for Chartered Property Casualty Underwriters, 1992, Ch. 1.) Moreover, insurance contracts are "affected with the public interest" and, unlike many other types of commercial transactions, are not secured for the purpose of commercial advantage; instead, insurance, especially that for liability risks, is bought for what policyholders often characterize as "peace of mind." Insurance companies themselves reinforce this notion through advertising and marketing themes, e.g., "a good neighbor" theme (State Farm), a minuteman as protector (Sentry), or an umbrella suggesting comprehensive protection (Travelers). Consistent with this practice, Allstate positions itself as "the good hands people" and promise its policyholders, "You're in good hands with Allstate." These representations to the public present the insurance industry as the repository of trust, confidence and peace of mind. (On these points, see especially *White v. Uniguard Mutual Insurance Company* 112 Idaho 94 1986.)

Authorities also point to the quasi-public nature of the service performed by insurers as evidence that insurance contracts are unique. As noted by the California Supreme Court in the case of *Egan v. Mutual of Omaha*:

> Suppliers of services affected with a public interest must take the public's interest seriously, where necessary placing it before their interest in maximizing gains and limiting disbursements…. As a supplier of a public service rather than a manufactured product, the obligations of insurers go beyond meeting the reasonable expectations of coverage. The obligations of good faith and fair dealing encompass qualities of decency and humanity inherent in the responsibilities of a fiduciary." (34 Cal. 3d 820 1979.)

It is this fiduciary quality of the insurer-insured relationship that must be addressed in this case because *Tidwell v. Allstate* represents an instance in which the insurer (Allstate) chose to exercise its third party claims settling authority but did so in a manner detrimental to its policyholder. When the insurer steps into the shoes of its policyholder, selects an attorney to represent the policyholder's interests in litigation, and controls the defense, these duties must be conducted in a manner consistent with what any attorney owes a client: they rise to the level of a fiduciary duty. To permit insurers to act otherwise would ignore the obvious conflict of interest between policyholder and insurer. For example, the insurer may wish to pay out as little as possible and may conduct the litigation in such a way as to minimize its payout; it may discover information harmful to its insured's interests as litigation proceeds and use this information to later deny or limit payments; it may learn things about the insured's economic status that prove useful in forcing the insured to yield on key matters; it may

discover the insured's level of knowledge or lack thereof about legal proceedings and use this information to its advantage. The significance of each of these points is enhanced by keeping in mind the following points: The insurer wrote the contract; the insurer holds all of the money; the insurer is experienced at negotiating and handling claims; and the insurer litigates as a routine matter, whereas, policyholders rarely encounter the court system. Indeed, Delaware courts hold that an insurer is the agent of its policyholder, a fiduciary, and an expert in third party claims; consequently, because of its superior expertise, the insurer must act in the best interests of the policyholder even if such action is against the wishes of the insured. (See *McNally v. Nationwide Insurance Company*, 815 F2d 3d Cir. 1987.) The courts in Alabama and Washington impose upon the insurer an "enhanced duty of good faith" to protect the policyholder under these circumstances when defense is conducted under a reservations of rights.

In managing the third party claim in this case, Allstate breached its duties to Mr. Strickland in the following ways. The case file indicates that Allstate personnel or defense counsel were advised on at least the following occasions that the case against Strickland could be settled within the $25,000 policy limits: Letter from B.T. Edmonds on 5/27/91; Mr. Charles Chase advised the Home Office in Illinois on or about 6/15/94 following the excess judgment that settlement within policy limits was still possible; on 8/29/94 Strickland's defense counsel advised settlement and on 9/9/94, Mr. Edmonds advised Allstate's claims handler Charles Dewberry that settlement within policy limits, less a discount, was still possible; and on 8/8/95, Mr. Edmonds again advised that plaintiff was willing to settle within policy limits.

Thus, Allstate had multiple offers to settle over a period of time covering more than four calendar years but chose not to do so. Such misconduct is inconsistent with proper claims handling procedures and shows a flagrant disregard for the interests of its policyholder.

The magnitude of Allstate's misconduct is enhanced by the fact that none of the offers to settle within policy limits were communicated to its insured, Mr. Strickland. In fact, even when Mr. Strickland requested through his Allstate appointed counsel that he wanted to determine whether the case could be settled for policy limits, he (Strickland) was not advised that such an offer had been tendered. A duty of good faith and fair dealing AND the fiduciary duty assumed by Allstate's appointed counsel required that offers to settle be communicated to Mr. Strickland. Failure to communicate settlement offers shows a flagrant disregard for policyholder interests.

Further, prudent claims procedures dictate that an insurer submit contested claims to a worst case scenario as a means of protecting its insured. In this case, the scenario should have included a "What if?" assessment of the consequences of going to court and losing, especially in light of the attorney's advice to Strickland that an excess judgment was possible. I see no evidence that Allstate expressed any such concern about a worst case evaluation of the claim from the policyholder's perspective. On the contrary, Allstate placed its interests first and foremost.

Relatedly, while there is evidence that the trial court suggested that the parties settle the case following the initial trial, I see no indications that Allstate took any affirmative steps to settle, despite advice from defense counsel that it seek settlement at

this critical juncture when, in the language of Georgia's Unfair Claims Settlement Act, Allstate had a duty to attempt "in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear." (See §33-6-34(4). It is difficult to imagine more reasonably clear evidence than a court judgment; however, a hard, inflexible line was drawn at $7,500 and Allstate would not budge, irrespective of the fact that every court involved ruled unfavorably to Allstate's position. Such conduct reflects a disregard for its policyholder's interests.

Another instance of the undermining of "utmost good faith" occurred when Allstate's insured was forced into bankruptcy and was represented in the bankruptcy filing by the same law firm retained by Allstate to represent his interests in the claims case. While the law firm apparently sought Bar Association opinion on the propriety of this arrangement, I am less concerned about what the legal profession thinks of such matters than what a prudent insurer should do under these conditions to protect its insured. In my opinion, Allstate should have objected to the dual representation (the same firm representing Strickland in liability litigation and in bankruptcy). Tolerance of such dual legal representation strongly implies that Allstate used its insured's economic status as a bargaining chip in its efforts to settle within the $25,000 policy limits.

Allstate's defense that Mr. Dewberry's failure to read his mail on time and that he was negligent in failing to do so must be weighed against the following facts: (1) Allstate's internal administrative procedure required that someone else assume the responsibility of opening Dewberry's mail during his absence; (2) Dewberry's discretion in the claims procedure was narrowly circumscribed by orders from the Illinois Home

Office attorneys; (3) any action/inaction by Dewberry was within the scope of responsibility granted to him by Allstate; and (4) Georgia law requires that Allstate has a duty to "adopt and implement procedures for the prompt investigation and settlement of claims arising under its policies." (§33-6-34(3). Further, should word get out that insurers can evade their duties to insureds by ignoring their mail, the consequences will be most unfavorable for insurance consumers.

Signed this _____ day of January 2000 in Newborn, Jasper County, Georgia.

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Tim Ryles

EXHIBIT A

DOCUMENTS REVIEWED

Allstate Auto Insurance Policy

Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment on All Claims for Punitive Damages, June 7, 1999

Complaint for Damages and Exhibits August 30, 1996

Allstate Brief for Partial Summary Judgment April 27, 1999

Deposition of Charles Dewberry February 22, 1999

Deposition or portions of depositions for Coleman Tidwell, Bob Gaddy, Larry Strickland, Larry Chase, David Prisant, and Lawrence Stachowski

Other works and sources cited in the body of the reports

EXHIBIT B

Tim Ryles Biographical Information