

Bad Faith Update

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A stage light illuminating a dark stage. The light is a bright, warm yellow-orange color, creating a strong contrast with the dark background. The light is focused on a central point, with a soft glow around it. The background is dark, with some faint, out-of-focus lights visible. The overall mood is dramatic and focused.

Setting the stage

Common Law or Statutory Bad Faith

- The insurance carrier failed to effectuate a prompt fair and equitable settlement of a claim with respect to which the insurer's liability has become reasonable clear, and
- the insurance carrier knew or should have known that the claim was covered
 - *Universal Life Ins. v. Giles* 950 S.W.2d 48 (Tex. 1997)

541.060(7) Standard

- The insurance carrier refused to pay a [covered] claim without conducting a reasonable investigation with respect to the claim
- *Universal Life Ins. v. Giles* 950 S.W.2d 48 (Tex. 1997)

- - failing to attempt, in good faith, to effectuate a prompt, fair, and equitable settlement under one portion of a policy of a claim with respect to which the insurer's liability has become reasonably clear in order to influence the claimant to settle an additional claim under another portion of the coverage
- - undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, provided that this prohibition does not apply to a compromise settlement of a doubtful or disputed claim;
- - refusing to pay a claim without conducting a reasonable investigation with respect to the claim;
- -failing to provide promptly to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or for the offer of a compromise settlement of a claim;

Who decides



Let's look at some sample jury questions

Did *Self Insured/Carrier* fail to comply with its duty of good faith and fair dealing to *Claimant*?

In answering this question, you are instructed that an insurer fails to comply with its duty of good faith and fair dealing by —

Failing to pay benefits when the insurer's liability has become reasonably clear *or*

Refusing to pay benefits without conducting a reasonable investigation.

Answer "Yes," or "No"

Answer: _____

•Did ***Self Insured/Carrier*** engage in any unfair or deceptive act or practice that caused damages to ***Claimant***?

•“Unfair or deceptive act or practice” means any of the following:

•*Failing to attempt in good faith to effectuate the prompt, fair and equitable payment of benefits when the insurer’s liability has become reasonably clear; or*

•*Failing to promptly provide to **Claimant** a reasonable explanation of the factual and legal basis in the policy for an insurer’s denial of the claim; or*

•*Refusing to pay a claim without conducting a reasonable investigation; or*

•*Misrepresenting the terms of the insurance policy in question by making any untrue statement of a material fact; or*

•*Misrepresenting the terms of the insurance policy in question by failing to state a material fact that is necessary to make other statements not misleading, considering the circumstances under which the statements are made; or*

•*Misrepresenting the terms of the insurance policy in question by making any statement in such a manner as to mislead a reasonably prudent person to a false conclusion of a material fact; or*

•*Misrepresenting the terms of the insurance policy in question by making a material misstatement of law; or*

•*Misrepresenting the terms of the insurance policy in question by failing to disclose any matter required by law to be disclosed.*

•

You are instructed to answer “Yes” or “No” with respect to each alleged unfair deceptive act or practice. You are further instructed to answer “Yes” or “No.”

•Answer: _____

Did *Self Insured/Carrier* engage in any such conduct knowingly?

“Knowingly” means actual awareness, of the falsity, deception, or unfairness of the conduct in question. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

Answer: _____

- What sum of money, if any, if paid now in cash, would fairly and reasonably compensate *Claimant* for her damages, if any, that were proximately caused by such conduct?
- Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of *Claimant*.

a. Physical pain and mental anguish sustained in the past.

Answer: _____

b. Physical pain and mental anguish that, in reasonable probability, *Claimant* will sustain in the future.

Answer: _____

c. Loss of earning capacity sustained in the past.

Answer: _____

d. Loss of earning capacity that, in reasonable probability, *Claimant* will sustain in the future.

Answer: _____

e. Disfigurement sustained in the past.

Answer: _____

f. Disfigurement that, in reasonable probability, *Claimant* will sustain in the future.

Answer: _____

g. Physical impairment sustained in the past.

Answer: _____

h. Physical impairment that, in reasonable probability, *Claimant* will sustain in the future.

Answer: _____

i. Loss of Credit Reputation sustained in the past.

Answer: _____

j. Loss of Credit Reputation that, in reasonable probability, *Claimant* will sustain in the future.

Answer: _____

What sum of money, if any, in addition to actual damages, should be awarded to *Claimant* against *Self Insured/Carrier* because the conduct of *Self Insured/Carrier* was committed knowingly and / or intentionally?

Factors to consider when additional damages, if any, are —

- a. The nature of the wrong;
- b. The character of the conduct involved;
- c. The degree of culpability of *Self Insured/Carrier*;
- d. The situation and sensibilities of the parties involved;
- e. The extent to which such conduct offends a public sense of justice and propriety;
- f. The net worth of *Self Insured/Carrier*.

Answer in dollars and cents, if any.

Answer: _____

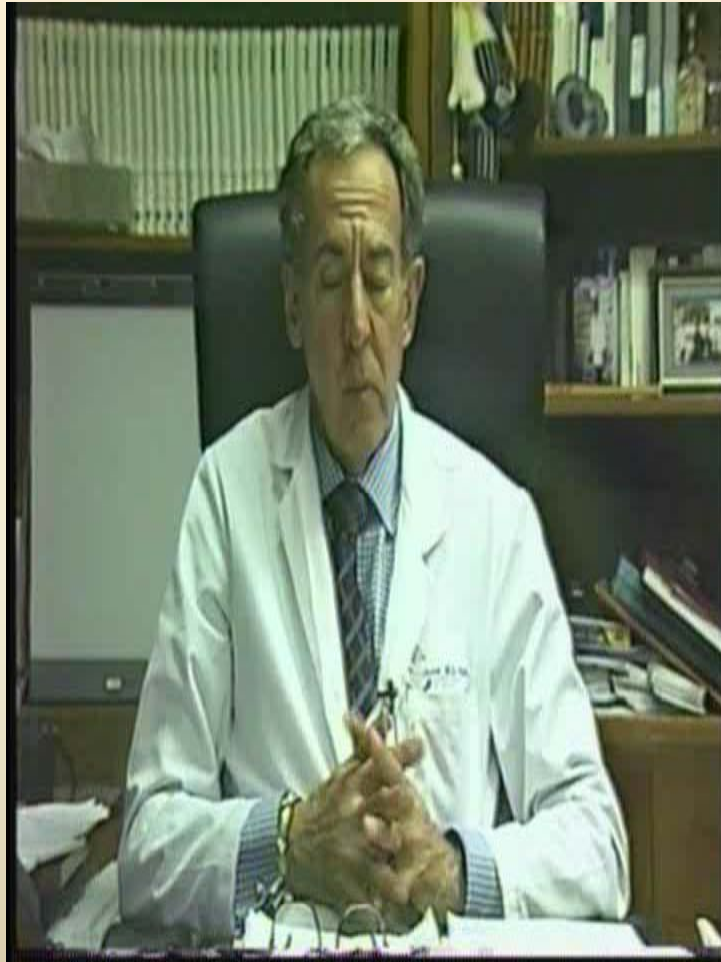
Prevention tips



TIPS

- Three point contact
- Stay neutral – emotions do not belong in claims decisions
- Bona fide job offers- read the rules
- 415.002 – allowing none adjusters to control/direct claims
- Extent or medical inquiries

Careful on your IME's



Things to watch out for with regard to experts – per *Texas Supreme Court*

- --*the expert's firm performed a substantial amount of work for insurance carriers*
- --*a high percentage of the expert's individual work is performed for insurance carriers*
- --*the expert was aware that the carrier would be required to pay the claim if he made findings in favor of the policyholder*
- --*the expert was selected because the carrier knew the expert's general view of this type of claim would be favorable to its position*



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