# "BAD FAITH" CLAIMS HANDLING LEADS TO PUNITIVE AWARD AGAINST AN INSURANCE COMPANY PROVIDING UNINSURED MOTORIST COVERAGE

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What happens when an insurance company engages in "bad faith" claims practices in California? Well, a good example occurred just recently in the courtroom of The Honorable Vaughn Walker, of the United States District Court for the Northern District of California – our local federal trial court: $921,853 plus costs in compensatory damages for financial injury and emotional distress, and $1 Million in punitive damages for malice, oppression and fraud in dealing with the insured. The Company: Leader Insurance Company, based in Birmingham, Alabama, and a part of the American Financial Group (AFE, NYSE). Leader has a website (www.leaderinsurance.com) which advertises its auto coverage as "High Performance Claims Service." "You'll get quick, responsive local service from people who really care," it claims. Well, let's look at what happened.

First of all, I need to disclose that I was not counsel for the plaintiff, insured in this case, but I did testify as an expert witness for her side on "good faith" insurance claims practices as defined by the case law, the California legislature in the "Unfair Claims Practices Statute" (Insurance Code section 790.03(h)), and the California Code of Regulations, Title 10, section 2695, which are regulations adopted by the executive branch of the government for carrying out the legislative mandates. These regulations expand on what "good faith" claims practices are in California by type of insurance coverage (auto, homeowners, etc.).

Now, let me tell you what happened in this case. Sue (not her real name) was a single mother who was riding with a friend on his motorcycle. She was wearing a helmet. They were riding in a parking lot of a mall approaching an intersection where the crossing vehicles were subject to a stop sign. As they approached, a vehicle came from the right, the motorcycle

swerved and tipped over, skidding to a stop some 70 or so feet away. There were witnesses who said the motorcycle was going too fast. The investigating officer, who had accident experience, stated in his report that the cause of the accident was the motorcycle's excessive speed. There were also claims that the VW did not come to a complete stop and was partially responsible for the accident.

Sue suffered a severe laceration to her knee and damage to her knee cap. She also had a concussion. She was not hospitalized but incurred $8000 in medical bills.

Unfortunately, the motorcycle on which she was riding was uninsured. While she had a claim against the driver for negligence, his personal pockets were lean. But, she had personal auto insurance with Leader, which included uninsured motorist coverage for the minimum limits at that time of $15,000 per accident. This means that because there was "fault" on the part of an insured motorist, her own insurance company – to which she paid premiums for this coverage – would "step into the shoes" of the insured motorist and provide up to $15,000 in insurance coverage for Sue to collect depending on the "value" of her case. That is, Sue's insurance company would become the "insurer" for the uninsured motorist, and provide coverage up to $15,000 for Sue to collect.

Sue made her claim for her uninsured motorist coverage through her lawyer, who also filed a lawsuit against the VW's driver and the mall (based on some obstructions at the intersection). However, accident reconstructions pinned responsibility on the motorcyclist because of excessive speed, which was estimated at 40-50 miles per hour at the time of the skid (in the mall's parking lot).

Sue's injuries posed some problems. She was having some memory problems because of the trauma to her head. Her knee was banged up, and her doctor predicted that she would have problems with it in the future, probably arthritis and some surgical procedures, including a possible total knee replacement.

Leader was provided with considerable information by Sue's counsel: the police report, the documents in the injury case, and a comprehensive package of medical reports and bills supporting her claim. Given the probable liability of the motorcycle driver for a large share of Sue's damages, it was clear that the case was worth more than the $15,000 limits of Sue's uninsured motorist coverage. Yet, after providing this information to Leader and advising that Sue would accept the $15,000 in settlement of her claim against Leader's coverage, Leader simply did not respond, even though the California regulations required at least a response (not necessarily an acceptance – just a "yes," "no," or "maybe"). Leader not only ignored Sue's counsel's request for settlement, but also ignored his request to join in the lawsuit as required by California law, forcing him to go to court to force Leader into the case. In addition, Leader did nothing to investigate Sue's claim as to the responsibility of the various parties, including the uninsured motorcyclist, or to look further into her damages claim. It simply "stonewalled," finally hiring counsel to represent it once the Court ordered it into the lawsuit that Sue had filed.

But there was more. A settlement conference was held in the lawsuit. The insurance carrier for the VW offered to pay $10,001 to settle its part of the case. All Leader had to do was pay its $15,000, and the case would be over. But guess what, Leader wanted a "credit" for what the VW's insurer was offering, so that it would only pay $4,999, leaving Sue with a total of $15,000 to pay her medical bills, pay her attorneys fees and costs, and compensate her for a small wage loss, and her pain and suffering and potential for permanent injury, including future medical expenses.

As a result, Sue was forced to go to trial against all parties. While Leader had hired a defense lawyer to "defend" the uninsured motorist claim, it instructed the lawyer not to show up at trial, leaving the uninsured motorcyclist with no one to defend against the claim. Even with this, Leader did not pay its $15,000. So at trial, a jury found the motorcyclist 100% negligent and responsible for Sue's injuries. Sue suffered a "cost bill" of several thousands of dollars because

the other defendants (the VW and mall) prevailed (they were represented at trial). Then, when Sue's lawyer tried to collect the $15,000 from Leader, its lawyers claimed that Sue had to release Leader from "all claims" including her "bad faith" claims against Leader, which was clearly against the law. Sue's counsel refused.

Finally, Sue hired a lawyer , Mike Michel from Walnut Creek, to file a lawsuit against Leader to collect the $15,000 and damages for Leader's bad faith. A year after the lawsuit was filed, Leader "decided" to unconditionally pay what Sue had been trying to collect for years – the $15,000 policy limits. So, the case proceeded to the trial, which took place last month in Judge Walker's courtroom.

The jury spoke after hearing the evidence and Judge Walker's instructions on the law.

I suppose there will now be an appeal during which interest will accrue on the judgment that Sue has against Leader. The question is whether, in the meanwhile, Leader will have learned its lesson. That is what these cases are all about – letting juries look at corporate practices under "good faith" and "fairness" rules that keep the playing field balanced, and not allowing them to use their economic clout to push their customers around by not providing what was promised. Here, that happened, and the remedy was appropriate. That is a hard way to learn a lesson; let's hope it works.

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