PLUNKETT COONEY

Bad Faith Failure to Settle, ERISA Coverage Update

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Bad Faith Failure to Settle – First Circuit (Massachusetts Law)

Calandro v. Sedgwick Claims Mgmt. Servs., Inc.
--- F.3d ---, 2019 WL 1236927 (1st Cir. Mar. 18, 2019)

The U.S. Court of Appeals for the First Circuit held that an insurance claims adjuster did not act in bad faith with respect to the handling of a wrongful death lawsuit against a nursing home. In the underlying lawsuit, the Estate of Genevieve Calandro (Calandro) asserted claims for wrongful death and "conscious pain and suffering" against Radius Healthcare Center (Radius) after Calandro died after falling from her wheelchair. Radius' third-party insurance adjuster, Sedgwick Claims Management Services (Sedgwick), made pretrial offers to settle the estate's pain and suffering claim for amounts less than $300,000, which the estate refused. After a jury trial, a verdict of approximately $14 million was entered against Radius. Radius' insurer paid the full amount of the judgment and obtained a release for itself and Radius. The estate then sent Sedgwick a $40 million demand for enhanced damages to which Sedgwick provided a counteroffer of $2 million.

Subsequently, the estate filed suit in the U.S. District Court for the District of Massachusetts, alleging bad faith failure to settle on the part of Sedgwick. The trial court found that Sedgwick made reasonable pretrial offers to settle the pain and suffering claim, and had no obligation to make settlement offers with respect to the wrongful death claim because Radius' liability was not reasonably clear. The appellate court affirmed the trial court's judgment, concluding that Sedgwick's pretrial settlement offers, with respect to the pain and suffering claim, were reasonable. The appellate court also stated that "we discern no clear error in the district court's implicit finding that, with respect to wrongful death, causation (and, therefore, liability) was not reasonably clear in October of 2011." Therefore, the appellate court found that Sedgwick did not act in bad faith.

ERISA – Tenth Circuit (Federal Law)

Teets v. Great-West Life & Annuity Ins. Co.
--- F.3d ---, 2019 WL 1372319 (10th Cir. Mar. 27, 2019)

The U.S. Court of Appeals for the Tenth Circuit affirmed a ruling by the district court in Colorado, granting summary judgment for Great-West Life and Annuity Insurance Company (Great-West) in a class-action lawsuit against it, saying that Great-West was not a fiduciary under the Employee Retirement Income Security Act (ERISA). Great-West managed an investment fund offered to employers under ERISA. The named plaintiff and other members of the class invested through their retirement plans with Great-West. Under the terms of the fund, Great-West reserved the right to retain the invested funds from the worker for 12 months after the worker sought to withdraw his or her contributions from the fund. Mr. Teets and the other class members alleged that Great-West violated ERISA through, inter alia, the 12-month retention of funds and in setting the rate at which the fund could collect a fee based on interest earned by participants. In considering Great-West's motion for summary judgment, the district court determined that the counts of Teets' complaint all hinged on the question of whether Great-West was acting as a fiduciary, in that it was exercising discretionary authority over the fund, at the time the decisions at issue were being made.

The appellate court upheld the district court's ruling that Great-West was not acting as a fiduciary and, therefore, was not bound by the statute's requirements. In particular, the appellate court found that the plaintiffs did not carry their burden of showing that Great-West "(1) did not merely follow a specific contractual term set in an arm's-length negotiation; and (2) took a unilateral action respecting plan management or assets without the plan or its participants having an opportunity to reject its decision." In this case, the fees collected by the fund were set forth in an arms-length contract, and participants had the opportunity to reject the fund's actions by leaving the fund. Moreover, the 12-month retention of invested funds did not violate ERISA because Great-West never exercised that option.

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