Is There A Genuine Dispute or Is It Bad Faith?

By Bill Daniels

30 Advocate 12 (February 2003)

Insureds trying to decide whether or not their carrier has an honest difference of opinion with them about a claim or is engaging in tortious bad faith need to include the genuine dispute doctrine in their thinking process.

Attorneys counseling either insureds or carriers need to have a grasp of this doctrine as well, whether they are providing advice during the course of a claim or in the midst of bad faith litigation.

Born out of the notion that bad faith implies unfair, unreasonable dealing, rather than simple mistaken judgment, the defense bar has seized on the genuine dispute doctrine as a powerful defense to tort claims. Generally, the defense argument can be summarized as: "We had a reasonable basis to act the way we did, so even if we made a mistake the plaintiff can't collect for bad faith." Unless the insured is able to put on evidence that the claims handling did not involve mere mistake or negligence, the genuine dispute doctrine by itself is enough to end a tort case by summary judgment.

Up until recently, the genuine dispute doctrine was largely limited to disputes over legal questions. For example, in Opsal v. United Services Auto Association (1991) 2 Cal.App.4th 1197, 10 Cal.Rptr.2d 352, a carrier was held to have acted reasonably in relying on dicta in a California Supreme Court opinion, even though that dicta was later rejected by the Court of Appeal.
The most recent pronouncement on genuine disputes expands the doctrine into broader territory. Chateau Chambrey Homeowners Association v. Associated International Ins. Co. (2001) 90 Cal.App.4th 335, 108 Cal.Rptr.2d 776, affirms that the genuine dispute doctrine can be applied to a factual rather than purely legal, claims dispute. The upshot is, insureds, carriers and their attorneys need to look at claims handling conduct and evidence with a sharpened eye.

In Chateau Chambrey, a Homeowners Association ("HOA") made a claim following the Northridge earthquake. The carrier made several interim payments but the HOA wasn't satisfied and sued for breach of contract and bad faith. A stipulated binding arbitration confirmed that the claim had been underpaid. Yet the carrier defended the bad faith claim by asserting that it had a "genuine dispute" as to coverage and amounts involved in the claim and successfully put on evidence at summary adjudication time to support its position.

In an opinion written by Justice Croskey, the Second District Court of Appeal affirmed summary adjudication of the bad faith claim, holding there was no evidence that the difference between the amounts paid by the carrier to settle the claim and the arbitration award represented anything but a genuine dispute over coverage and damages. In its analysis, Chateau Chambrey

teaches us some important lessons about what does or does not constitute a genuine dispute that will defeat a bad faith claim.

Perhaps the most important point made by Justice Croskey in his discussion of the genuine dispute doctrine is what the defense does not allow. Most assuredly, the doctrine does not grant license to a carrier to engage in bad faith claims handling, manufacture a dispute, and then rely upon the manufactured dispute in raising a genuine issue defense.

For a carrier to successfully invoke the genuine dispute doctrine, the dispute with the insured must be well grounded in the facts of the claim itself. This is only logical, since whether or not a carrier has acted reasonably is usually an issue of fact for the jury and only becomes a question of law where the evidence is undisputed and only one reasonable inference can be drawn from that evidence.

The notion that a "genuine dispute" is fact driven is underlined in Chateau Chambrey, which notes at the beginning of its discussion that there was no competent evidence presented by the insured at summary judgment time sufficient to meet the burden of showing that the carrier "acted unreasonably or without proper cause in its adjustment of HOA's claim." Without sufficient affirmative evidence of unfair claims handling from the plaintiff, the Court of Appeal relied only upon the material facts submitted by the carrier. The result under those circumstances was inevitable.

Even so, Chateau Chambrey, makes clear that a carrier cannot rely on the genuine dispute doctrine as a defense where there is evidence that its acted unreasonably or unfairly by engaging in such practices as conducting a biased investigation during the course of a claim. Likewise, situations where the evidence shows a carrier's employees lied at depositions or to the insured, or where the carrier relies on dishonestly selected experts, or where the carrier's experts are unreasonable, or where the carrier failed to conduct a thorough investigation, the question of bad faith is reserved for the jury. Chateau Chambrey is explicit that conduct constituting unreasonable or unfair claims handling sufficient to defeat a genuine dispute doctrine defense is not limited by any list.

Viewed in that light, while good carriers that can demonstrate they acted reasonably and fairly during a claim but had a good faith difference of opinion about the result will prevail on summary judgment, the bedrock principles that are designed to discourage bad carriers from abusing their power positions vis-a-vis their insureds remain solid.

After all, it is settled in California that a carrier has a duty to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear and to make fair offers to insureds rather than compelling them to litigate for benefits. There is a duty to disclose all material facts regarding benefits, coverage and time limits affecting claims. There is a duty to maintain reasonable standards for prompt, investigation and processing of claims. Attempts to settle by unreasonably low offers are barred and undisputed portions of the claim must be promptly tendered. The carrier's duties in fairly adjusting claims are non-delegable.

In other words, statutory, regulatory and decisional law imposes specific claims handling duties on carriers. Like any citizen of California, a carrier may not break the law without consequence. So, the genuine dispute doctrine is only available as a defense where there is undisputed evidence of a genuine dispute of some fact of liability between insurer and insured. Otherwise, the general rule that "where bad faith is alleged, a jury is empowered to resolve conflicting evidence regarding an insurer's conduct and motives" applies. Dalrymple v. United Services Auto. Ass'n (1995) 40 Cal.App.4th 497, 511, 46 Cal.Rptr.2d 845.

Still, the genuine dispute doctrine remains a powerful defense tool when a carrier is able to paint its actions as reasonable. For example, in Nager v. Allstate (2000) 83 Cal.App.4th 284, 99 Cal.Rptr.2d 348, a carrier put on evidence that it had evaluated medical bills for whether or not they were reasonable and necessary under a med pay benefit evaluation program that the carrier itself conducted. The carrier presented evidence as to what standards it utilized in evaluating the medical bills and explained its methodology. Even in the fact of evidence that the evaluation program did not provide benefits within the reasonable expectations of the insured, the genuine dispute doctrine was successfully invoked to keep the bad faith question from a jury.

Likewise, in Guebara v. Allstate Insurance Company (9th Cir. 2001) 237 F.3d 987, the genuine dispute doctrine provided a defense where the carrier was found to have reasonably relied upon the results of its investigation, including three expert opinions, inconsistent testimony by the claimant and her witnesses and the claimant's desperate financial circumstances. Absent evidence of unfair and unreasonably claims handling, the issue of bad faith was decided in the carrier's favor as a matter of law.

As the genuine dispute doctrine takes on the nature of an affirmative defense to bad faith, it cannot be successfully invoked during the summary judgment without the carrier meeting its burden of putting on evidence sufficient to support the defense at trial. Consumer Cause, Inc. v. Smilecare (2001) 91 Cal.App.4th 454, 110 Cal.Rptr. 627, 638. Indeed, every genuine dispute doctrine decision published by either state of federal courts contain analyses that are fact intensive and fact dependent. Since the engine that drives bad faith litigation, i.e., the question of whether or not the carrier acted "reasonably" is itself fact specific, this should be no surprise. Even so, insureds trying to understand whether or not they are experiencing bad faith claims conduct or are merely irritated by a claims process that can often be lengthy and frustrating, must be counseled about what makes for a genuine dispute between carrier and insured and what makes for a breach of the implied covenant. Attorneys evaluating bad faith actions, either as plaintiff's counsel or defense, need to keep the concept in mind as well.

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