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CALIFORNIA SUPREME COURT HOLDS “GENUINE DISPUTE” DEFENSE TO BAD FAITH CLAIM REQUIRES INSURER TO THOROUGHLY INVESTIGATE AND OBJECTIVELY EVALUATE UIM CLAIM WHEN MADE, EVEN IF CLAIM IS ULTIMATELY PAID IN FULL

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In its new decision issued on November 29, 2007, *Wilson v. 21st Century Insurance Company*, ___ Cal.Rptr.3d ___, 2007 WL 4200527 (2007), the California Supreme Court held that an insurer which simply disputes the medical diagnosis of its UIM insured without conducting a thorough investigation of that diagnosis is not entitled to summary judgment on a bad faith claim based on the existence of a “genuine dispute” of fact, even though the insurer subsequently conducted an IME and paid the UIM claim in full. Although the Supreme Court agreed that the existence of a “genuine dispute” of fact is a defense to a bad faith claim, the availability of that “genuine dispute” defense depends on the insurer’s thorough investigation and objective evaluation of the insured’s claim *when made*. Where, as here, the insurer made no investigation of the diagnosis at the time the UIM claim was made, the insurer was not entitled to summary judgment on the bad faith claim.

The insured, Reagan Wilson, was involved in an auto accident with a drunk driver and suffered injuries to her neck and spine. Liability was undisputed. The only question was the extent of Wilson’s injuries. Wilson carried UIM coverage under a policy issued by defendant 21st Century Insurance Company with limits up to \$100,000. The other driver’s insurer paid Wilson its full limit of \$15,000 for bodily injury, and Wilson requested that 21st Century pay its UIM policy limit subject to an offset for the other driver’s insurer’s \$15,000 payment. Wilson’s treating physician’s diagnosis found that the 21-year-old Wilson had “degenerative disk changes as a result of the occult disk injury at the levels in her neck from her high speed motor vehicle accident,” and that those spinal changes were atypical for her age and “almost certainly” caused by the automobile accident. Nonetheless, 21st Century rejected the claim on the asserted ground that Wilson had suffered only soft tissue injuries in the collision and had “preexisting” degenerative disk disease. 21st Century based this decision on its own review of Wilson’s medical records without consulting her physician or obtaining an independent examination by a doctor of its choice.

Over the subsequent two years after the rejection of Wilson's UIM claim, Wilson's doctors reached different conclusions about the extent of her injuries, and also disagreed as to the appropriate course of treatment. In June 2003, 21st Century retained a neurosurgeon who examined Wilson, reviewed her medical records, and concluded that surgery was indicated. Less than one month later, 21st Century paid Wilson the remaining amount of her UIM coverage, \$85,000. Wilson then brought a breach of contract and bad faith action against 21st Century based upon its two-year delay in paying the policy limits. Wilson alleged that 21st Century failed to conduct a prompt and reasonable investigation.

21st Century moved for summary judgment on the bad faith claim on the ground that its initial decision to refuse Wilson's UIM demand was, in light of the facts known to 21st Century at the time, reasonable as a matter of law. The Superior Court granted the insurer's motion, finding no triable issue of fact as to whether 21st Century had acted in bad faith. The Court of Appeal reversed, holding triable issues of fact existed as to whether 21st Century had thoroughly investigated and objectively evaluated Wilson's UIM claim before denying it. The California Supreme Court granted 21st Century's petition for review and affirmed the judgment of the Court of Appeal.

The first issue addressed by the Supreme Court was whether 21st Century had performed a "thorough investigation" and "fair evaluation" prior to its initial rejection of Wilson's UIM claim. The court noted that "[w]hile an insurance company has no obligation under the implied covenant of good faith and fair dealing to pay every claim its insured makes, the insurer cannot deny the claim 'without fully investigating the grounds for its denial.'" Although the Court refused to state a general rule regarding what type of investigation is needed to meet an insurer's obligations under the implied covenant of good faith, it did find that a triable issue of fact existed as to whether it was reasonable for 21st Century to deny Wilson's UIM claim. At the time the claim was first denied, Wilson was complaining of continuing neck pain. On examination of Wilson and her x-ray, Dr. Southern, Wilson's orthopedist, concluded that a segment of her cervical spine was "obviously degenerative," that such a change was unusual at her age, and that it was probably due to her recent auto accident. The MRI he ordered confirmed bulging disks in the vertebrae of her neck.

Without having an independent medical doctor review Wilson's medical records or examine Wilson herself, 21st Century denied the UIM claim on the ground that Wilson's pain was due only to "soft tissue injury superimposed by a preexisting degenerative disk disease." The Supreme Court held that nothing in the materials reviewed by 21st Century prior to its rejection of the claim justified 21st Century's conclusions.

Of some importance, the Supreme Court noted that 21st Century was not obligated to accept Dr. Southern's opinion without scrutiny or investigation. The court further opined that to the extent 21st Century had good faith doubts regarding the treating physician's opinion, 21st Century would have been within its rights to have a physician review all submitted medical records and offer an opinion or have its insured examined by other physicians. According to the Court, however, "[w]hat it could

not do, consistent with the implied covenant of good faith and fair dealing, was ignore Dr. Southern's conclusions without any attempt at adequate investigation, and reach contrary conclusions lacking any discernable medical foundation." Under these facts, the Supreme Court held that a triable issue of fact existed as to whether it was reasonable to deny Wilson's claim on the grounds stated without further medical investigation.

The next issue addressed by the California Supreme Court was the "Genuine Dispute Rule" relied upon by 21st Century to defeat the bad faith claim. Under the genuine dispute rule, an insurer denying or delaying payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage or the amount of the insured's coverage claim is not liable in bad faith even though it might be liable for breach of contract. With respect to the "genuine dispute" or "genuine issue" rule, the Supreme Court held that an insurer is entitled to summary judgment based on a genuine dispute over coverage or the value of the insured claim only where the summary judgment record demonstrates the absence of triable issues as to whether the disputed position upon which the insurer denied the claim was reached reasonably and in good faith. With respect to the Wilson claim, the Court reiterated that a jury could have found that 21st Century lacked any factual basis for its conclusion that Wilson's disk damage was "preexisting" and that in reaching this conclusion, 21st Century had unfairly ignored medical evidence submitted by its insured. As such, the court held that "a dispute based on such an unreasonable position is not genuine [and] summary judgment was not proper on this ground."

The California Supreme Court's ruling in *Wilson v. 21st Century* is significant in that it may make it very difficult in the future for a insurer to obtain summary judgment on bad faith claims in a first-party bad faith case based on "genuine issue" of fact or a "genuine dispute" over coverage or the value of the covered claim without a thorough investigation which is fully documented and supports the insurer's decision. Mere suspicion that the injury is false or overblown, without obtaining evidence (including expert evidence such as an IME) may not create a "genuine dispute" which can bar a bad faith claim. Nevertheless, the duty to investigate a claim and to do so thoroughly has long been acknowledged by the courts as a component of the covenant of good faith and fair dealing. See *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal.3d 809, 819, cited in the *Wilson* decision.

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