

Insurer may be liable for bad faith in failing to conduct an adequate investigation of the insured's claim, and failure to attempt to effectuate a prompt and fair settlement.

FACTS AND PROCEDURAL POSTURE

Appellant Ted Maslo suffered numerous bodily injuries as a result of an accident caused by an uninsured motorist. In September 2008 he reported the accident to his insurer who also received a copy of the traffic collision report stating no fault on behalf of the appellant. In August 2009, Maslo supplied his insurer with copies of all his medical records and bills. He sought settlement of the uninsured motorist claim in the amount of the policy limit of \$250,000. The insurer did not respond to the settlement demand. In January 2010, appellant renewed his demand and requested a response. In February, the insurer asked for an extension of time to respond, which appellant granted. Then the insurer retained counsel for an arbitration proceeding on appellant's claim. From then until the date of arbitration in November 2011, the parties engaged in discovery. Maslo's discovery responses provided the insurer with all documents concerning liability and damages that the insurer needed to fully and fairly evaluate the case. At no time prior to the arbitration hearing did the insurer schedule depositions of Maslo's treating physicians or interview them, nor did the insurer request or conduct a defense medical examination, or obtain a defense medical record review.

In October 2012, Maslo filed a first amended complaint for damages against his insurer, alleging breach of the covenant of good faith and fair dealing. Maslo alleged that the insurer's failure to properly and fairly investigate and handle the claim, and the failure and refusal to make any offer of settlement was contrary to *Insurance Code § 790.03(h)(5)*, which provides that it is an unfair claim settlement practice not to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. Maslo further claimed he was forced to go to arbitration and incur additional costs and attorney fees as a result of the insurer's failure. The insurer filed a demurrer, arguing that the complaint failed to adequately allege causation. The court sustained the demurrer with leave to amend. In December 2012, Maslo filed a second amended complaint which mirrored the first amended complaint, but added factual allegations detailing the specific costs he incurred. The insurer filed a demurrer to the second amended complaint, repeating the same argument regarding causation. It also contended that causation on an insurance "bad faith" claim could be shown only where the arbitrator determined that the claim was worth more than the initial demand made by the insured. The trial court sustained the demurrer without leave to amend. Maslo filed an appeal. The court of appeal reversed and remanded with directions to the trial court to overrule the demurrer.

DISCUSSION

The court of appeal found that an insurer's obligation under the implied covenant of good faith and fair dealing with respect to first party coverage included a duty not to unreasonably withhold benefits due under the policy. An insurer cannot deny a claim without fully investigating the grounds for its denial. Applying those principles, the court found the second amended complaint stated a bad faith cause of action. Given the insurer's failure to conduct an adequate investigation, and the insurer's failure to make a settlement offer until after the arbitration which was more than 3 years after the accident and more than 2 years after the insurer had all appropriate medical documentation, the court found a reasonable jury could find the insurer liable for breach of the covenant of good faith and fair dealing.

Relying on out-of-state authority, the insurer argued it did not have the same duty to act in good faith in the uninsured motorist context. The court held that was contrary to California case authority and California's *Insurance Code* § 790.01(h)(5) which applies to all persons engaged in the business of insurance. Thus, in California an insurer has the same duty to act in good faith in the uninsured context as it does in any other insurance context. The insurer also argued it was not liable in bad faith if it denied or delayed the 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. The court rejected that argument, concluding that a genuine dispute existed only where the insurer's position was maintained in good faith and on reasonable grounds. Not only did the insurer fail to thoroughly and fairly investigate Maslo's claim despite all the evidence provided, it also failed to respond in good faith to appellant's settlement demand, failed to provide a reason for withholding payment, refused appellant's offer to participate in mediation, and provided appellant no opportunity to negotiate a settlement. Finding this behavior was not maintained in good faith or on reasonable grounds, the court concluded the insurer could not rely on the "genuine dispute" rule.

The insurer also contended it had the right to arbitrate a dispute over the amount of damages. It claimed it may be liable only where the damages plainly exceed the policy limits. In all other circumstances, it may refuse to investigate, evaluate or even respond to its insured so long as the ultimate award is less than the insured's initial demand, as was the case here. The court found this position was contrary to California common law and the statutory requirements of the *Insurance Code*. Although the insurer had a right to arbitration when the insurer and insured disagreed over the existence or extent of coverage, that right did not abrogate the insurer's duty of good faith in handling uninsured motorist claims. Where there was no issue reasonably to be resolved by arbitration and liability of the uninsured motorist was clear, the failure to attempt to offer a prompt and fair settlement violated the insurer's statutory duties. Even where the amount of damages is lower than the policy limits, an insurer is acting unreasonably by failing to pay damages that are certain and demanding arbitration on those damages.

Finally, the court concluded that it was not appellant's conduct, but the insurer's that precluded any possible settlement and made arbitration inevitable. Therefore the second amended complaint adequately alleged causation by asserting the insurer's conduct was the direct and proximate cause of appellant's damages. The trial court erred in sustaining the demurrer and dismissing with prejudice.