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Summary Judgment in Favor of Insurer Reversed by California Appellate Court in Application of "Genuine Dispute" Doctrine

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The LHD/ERISA Advisor

Under the "genuine dispute" doctrine, an insurer is not liable for bad faith if its denial of a claim was reasonable. In *Ghazarian v. Magellan Health, Inc.*, 53 Cal. App. 5th 171 (2020), a California appellate court reversed a ruling of summary judgment in favor of a defendant insurer, finding that the "genuine dispute" doctrine did not apply where the insurer conducted a flawed investigation, but its ultimate denial could be deemed reasonable.

In so holding, the court explained that "to avoid bad faith liability, it is not enough that an insurer's ultimate decision might be considered reasonable at first glance." Rather, the court clarified, the insurer's actual investigation and basis for the denial had to be reasonable.

In *Ghazarian*, the defendant medical insurer ("Ghazarian") initially approved 157 hours of medically necessary ABA therapy for an autistic child. When the child turned seven, however, Ghazarian determined instead that only 81 hours per month were medically necessary. The parents of the child requested that the Department of Managed Health Care conduct an independent review of the denial. Pursuant to this review, two of the three independent physician reviewers disagreed with the denial, while the other agreed. As a result, the Department ordered Ghazarian to reverse the denial and authorize the requested care. The insurer did so.

The parents then sued the insurer for bad faith. Ghazarian filed a motion for summary judgment, asserting that, pursuant to the "genuine dispute doctrine," there could be no bad faith because the denial was reasonable. Since one of the independent physicians agreed with the denial, the trial court found that Ghazarian acted reasonably as a matter of law.

The court of appeal found that the summary judgment was improperly granted. As the court of appeal noted, although one of the three independent physicians had approved Ghazarian's denial, his reasoning in fact contradicted the insurer's reasoning. The independent physician had found that the treatment could be reduced because the child was not making progress under the ABA therapy. By contrast, Ghazarian had stated that the child did not need as much treatment because he had already made significant progress under the therapy. Furthermore, the court of appeal found that there were questions of fact as to whether defendants thoroughly evaluated supporting documentation for the

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claim and pressured the child's therapy provider to adopt their allegedly unreasonable criteria.

The court of appeal therefore determined that summary judgment in favor of the insurer should not have been granted. Affirming the rule that "[a]n insurer cannot claim the benefit of the genuine dispute doctrine based on an investigation or evaluation of the insured's claim that is not full, fair and thorough," the court stated "[a] health insurer is not absolved of bad faith liability if it bumbles into a facially reasonable medical decision using patently unfair medical necessity criteria. Even a stopped clock is right twice a day."

As *Ghazarian* makes clear, insurers cannot escape bad faith liability merely by showing that the determination is objectively reasonable, or by pointing to an expert who affirms the decision. Rather, they must show that the investigation and reasoning of the insurer in support of the determination was itself reasonable.