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New Case Law Establishes Important Defenses for Insurers Handling Uninsured/Underinsured Motorist Claims

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Two recent cases hold that an insured who claims damages significantly higher than those awarded by the arbitrator in an uninsured/underinsured motorist (UM/UIM) arbitration may be barred from pursuing a bad faith claim against the insurer, even if the insurer's pre-arbitration settlement offer was less than the arbitrator's award.

Rappaport-Scott v. Interinsurance Exch. of the Auto. Club **Shifting The Focus To The Insured's Total Claimed Damages**

Where an insured recovers more in a UM/UIM arbitration than the insurer had offered in settlement before the arbitration, the insured frequently pursues a follow-up bad faith suit against the insurer. In these bad faith suits, the insured argues that the mere fact that the insurer offered less than was ultimately awarded in the arbitration establishes that the insurer handled the claim unreasonably. This facile argument suffered a serious setback in *Rappaport-Scott v. Interinsurance Exch. of the Auto. Club*, 146 Cal.App.4th 831 (2007), where the court held that the focus can and should be on the insured's pre-arbitration evaluation, rather than the insurer's.

Rappaport-Scott was injured by an underinsured motorist. Claiming that she suffered over $346,000 in total damages from the accident, she demanded that her insurer pay her the $100,000 limit of her UIM coverage, reduced by the $25,000 that she had already received in settlement from the underinsured driver. The insurer offered only $7,000 to settle the claim.

The claim was arbitrated and the arbitrator determined that Rappaport-Scott's total damages were $63,000. The award was then reduced by the $25,000 settlement with the underinsured driver and by $5,000 for medical expenses benefits the insurer had already paid, for a total award of $33,000. Rappaport-Scott then sued her insurer for bad faith, relying primarily on the fact that the insurer's pre-arbitration demand was less than one-quarter of the amount ultimately awarded. The Court of Appeal held that, despite the difference between what the insurer offered and the amount awarded, the difference between Rappaport-Scott's evaluation ($346,000) and the arbitrator's award ($63,000) was great enough, by itself, to establish the existence of a "genuine dispute" that precluded bad faith liability as a matter of law:

Despite the difference between the $7,000 offered by Interinsurance and the $33,000 later determined to be payable on the policy, the vast difference between the $346,732.34 in losses claimed by Rappaport-Scott and the $63,000 in actual losses as determined by the arbitrator demonstrates, as a matter of law, that a genuine dispute existed as to the amount payable on the claim.

Id., 146 Cal.App.4th at 839. ***Maynard v. State Farm Mutual Automobile Ins. Co*. Applying Rappaport-Scott And Establishing Additional Defenses**

In *Maynard v. State Farm Mutual Automobile Ins. Co*., 499 F.Supp.2d 1154 (C.D.Cal. 2007), the court applied Rappaport-Scott to grant summary judgment in favor of an insurer represented by Luce Forward. There, Maynard claimed that he had suffered $500,000 in damages in an accident with an underinsured driver. He demanded that State Farm pay him his $100,000 UIM limits, less the $15,000 he had already recovered from the underinsured motorist. State Farm offered to settle the claim for $5,000. The dispute was arbitrated and the arbitrator found that Maynard had $86,000 in total damages. The award was then reduced by the $15,000 Maynard had received from the underinsured motorist and the $7,995 State Farm had previously paid in medical expenses benefits, for a total award of $63,005.

Maynard then sued State Farm for Bad faith, alleging that (1) the arbitration award proved that State Farm's $5,000 pre-arbitration award was unreasonable, (2) State Farm had engaged in various types of misconduct before Maynard settled his claim against the underinsured motorist, and (3) State Farm had unreasonably assigned a multitude of different adjusters to handle his claim. The court rejected all of these theories of liability, and granted summary judgment in favor of State Farm. First, applying *Rappaport-Scott*, the court held that Maynard's own inflated evaluation of his claim precluded State Farm's liability as a matter of law:

As the court in *Rappaport-Scott* held, **the discrepancy between what State Farm offered in settlement and what Plaintiff obtained as damages is not the relevant point; the measure of a genuine dispute is the difference between what Plaintiff claimed as damages and what Plaintiff was awarded during arbitration**. . . . This discrepancy demonstrates that, as the *Rappaport-Scott* court held, State Farm had - "as a matter of law" - a genuine dispute with Plaintiff and therefore, State Farm acted reasonably in evaluating Plaintiff's claim.

Id., 499 F.Supp.2d at 1162 (emphasis added).

Next, the court rejected the theory that State Farm could be held liable for conduct that occurred before the claim against the underinsured motorist had been settled:

These allegations are irrelevant because, prior to Plaintiff's June 2005 claim under his UM/UIM policy, State Farm had **no** obligation to investigate Plaintiff's accident. . . . Therefore, State Farm cannot be liable for any actions prior to Plaintiff's claim for benefits.

Id., 499 F.Supp.2d at 1164 (emphasis in original).

Finally, the court held that the mere fact that State Farm used multiple claims adjusters on the claim did not support a bad faith claim: "Plaintiff also believes that using multiple claims adjusters on his claim constituted bad faith. While using multiple adjusters may not be the best of business practice, sloppy claims handling on State Farm's part does not constitute bad faith." *Id*.

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