David and Horne Receive Full Defense Verdict in Bad Faith Litigation before Federal District Court

Partners

Allen N. David

Related Practices

Insurance Coverage and Bad Faith Litigation

By Peabody & Arnold on February 28, 2018

A third-party claims administrator did not violate G.L. c. 93A or 176D in its handling of a wrongful death lawsuit brought by the decedent's estate against a nursing home. In a 21-page decision by Chief Judge Patti B. Saris of the District of Massachusetts in *Garrick Calandro, as Administrator of the Estate of Genevieve Calandro v. Sedgwick Claims Management Services*, she found that Sedgwick Claims Management Services did not commit any bad faith entitling the decedent's estate to damages. Plaintiff Garrick Calandro, as administrator of his mother's estate, alleged that Sedgwick violated c. 176 and c. 93A by failing to investigate and failing to make any reasonable attempt to settle the negligence and wrongful death claims involving his 91-year-old mother who died after a fall at a nursing home in Danvers, Massachusetts. Allen David and Jane Horne of Peabody & Arnold LLP represented Sedgwick.

Sedgwick is a third-party administrator (or "TPA") for insurance companies and self-insureds. Hartford Insurance Company, through its subsidiary, Pacific Insurance Company, insured the subject nursing home with a $1 million policy. Hartford contracted with Sedgwick as TPA to undertake certain actions in adjusting claims on behalf of Hartford, including the claim against the nursing home. In August 2011, Calandro filed suit against the nursing home alleging, in part, wrongful death, and demanding $500,000 in settlement. In July 2012, Calandro amended the complaint to add the decedent's physician as a party. In November 2013, Calandro demanded $500,000 total to settle with both defendants. In February 2014, the defendants made a joint settlement offer of $275,000, which was rejected. At all times, Sedgwick (and defense counsel) placed a verdict value on the case of between $300,000 and $500,000, with a 50 percent attribution to each defendant. In May 2014, the defendants extended a joint $300,000 offer. Shortly before trial, the physician settled out separately for $250,000. The underlying case went to trial in July 2014. The jury found that the nursing home had breached its duty of care and had been grossly negligent. It awarded compensatory damages of $1,452,000 million and punitive damages of $12,514,605 million, for a total verdict of approximately $14 million.

The four-day trial before Judge Saris focused on whether liability on the underlying wrongful death claim, vis-à-vis the nursing home, was, at any point, reasonably clear. In order for liability to be reasonably clear in a tort action, each of the following elements must be reasonably clear: (1) breach; (2) causation; and (3) damages. The Court found that liability on the wrongful death claim (whether the nursing home caused the death) was not reasonably clear at any point in the litigation because causation was always fairly disputed. The Court credited trial testimony that Sedgwick attempted to engage in settlement negotiations with plaintiff's counsel one month before trial, but was rebuffed. The Court also credited testimony that on the eve of trial, counsel for the nursing home made an oral offer of settlement of $250,000—which, coupled with the physician's $250,000 settlement, hit the high end of Sedgwick's estimated verdict value. The Court also found that Sedgwick made other reasonable offers of settlement at key stages of the litigation.

The Court declined to decide whether Sedgwick is in the business of insurance, as the term is defined in

c. 176D. Throughout the litigation, Sedgwick argued that it could not be subject to c. 176D in any event, as it is not engaged in the business of insurance.

The full text of the decision can be found at *Garrick Calandro, as Administrator of the Estate of Genevieve Calandro v. Sedgwick Claims Management Services*, No. CV 15-10533, 2017 WL 5593777 (D. Mass. Nov. 21, 2017).

