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NEWSLETTER

Bad Faith Action Can Proceed against Medical Malpractice Insurer Even without Initiation of Malpractice Suit against Insured Doctor

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In an unpublished decision, a Massachusetts district court, applying Massachusetts law, has held that a bad faith lawsuit may be brought against a medical malpractice insurer for failure to "effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear" even if the insured physician has not been sued for malpractice. *Rurak v. Med. Prof'l. Mut. Ins. Co.*, 2003 WL 21212721 (D. Mass. May 19, 2003).

The insured physician treated a patient who subsequently suffered a heart attack as a result of negligent medical treatment. The insurer, which had issued a medical malpractice policy to the physician, received four expert reports including one it procured, as well as a second by an expert the insurer had retained as its own expert in other cases, all of which indicated that the physician's "liability was reasonably clear." Although the injured patient never initiated a medical malpractice suit against the radiologist, he made a claim to the insurer. The patient subsequently filed suit against the insurer, alleging that the insurer had "stonewalled" by refusing to make a settlement offer or attempt to resolve the suit.

The district court rejected the insurer's motion to dismiss on the grounds that a bad faith claim cannot proceed before a determination of liability against the physician. The court explained that the Massachusetts Unfair Claims Settlement Practices Act requires an insurance company to "effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear." It also noted that the Supreme Judicial Court of Massachusetts had previously held that successful litigation of an underlying claim is not a prerequisite to bringing a claim for bad faith insurance practices. *See Clegg v. Butler*, 424 Mass. 413, 419, 676 N.E.2d 1134 (1997). Accordingly, the court held that the action could proceed.

For more information, please contact us at 202.719.7130.