

Nelson & Dahle, P.C.

316 North 26th Street Billings, Montana 59101 p: 406.867.7000

FEDERAL COURT

VERDICT: \$280,000, insurance bad faith.

A Billings jury found that Metropolitan Property & Casualty violated the UTPA and breached the implied covenant of good faith & fair dealing in connection with an underlying claim by Mike Balich, and awarded \$30,000 compensatory damages and \$250,000 punitives. Balich was injured in a collision with Charlie Layboult, who pled guilty to DUI the day after the accident. Balich claimed ankle and chest injuries, a fractured rib, nerve entrapment, and aggravation of allergies and asthma. Layboult's insurer MetLife disputed all claims beyond the ankle on the basis that they were not reported in the medical records until later, and that the chest, allergies, and asthma had other causes unrelated to the accident. Late in the case it increased its offer from \$4,000 to policy limits of \$50,000. James Edmiston represented Balich in the underlying claim. Peter Habein and Ian McIntosh represented Layboult.

Balich alleged that MetLife acted improperly in adjusting and handling his claim. He alleged that it violated MCA 33_18_201(1) by misrepresenting pertinent facts in its policy relating to coverages, §201(4) by refusing to properly evaluate and pay the claim without a reasonable investigation based on all available information, §201(5) by failing to affirm or deny coverage within a reasonable time, and §201(6) by neglecting to attempt in good faith to effectuate prompt, fair, and equitable settlement of claims in which liability had become reasonably clear. He alleged that pursuant to MCA 242(4) he has a separate cause for violation of those sections, that MetLife's conduct is of such frequency as to indicate a general business practice, and that it breached the covenant of good faith & fair dealing it owed him as a third-party claimant which constitutes common law bad faith.

MetLife contended that it did not violate the UTPA or common law duties and possessed a reasonable basis in law and fact for its adjusting and handling of Balich's claim against Layboult. It contended that the communications, impressions, opinions, and advice from Habein and McIntosh with respect to the claim and suit constituted evidence supporting the reasonable basis in law and fact for its actions. It asserted that Balich's claim lacked evidence of fraud or malice. The jury was instructed as to whether there was an agency relationship between Habein/McIntosh and MetLife.

Plaintiff's experts: attorney James Manley, Polson; attorney James Edmiston, Billings.

Defendant's experts: attorney Michael Anderson, Billings. Lannie Stevens, Laramie (insurance practices).

Tom Sexton, Seattle (MetLife claim rep, video). Demand, \$80,000; offer in 2001, \$20,000-\$25,000, offer at mediation in 2004, \$5,000. Jury request, \$30,000; jury suggestion, \$0. Mediator, Magistrate Anderson (the case was assigned to Judge Cebull at that time, later assigned to Anderson).

Jury deliberated 3 hours including lunch 5th day on liability/compensatory damages, 1 hour on punitives; Magistrate Anderson.

Balich v Metropolitan Property & Casualty Ins., CV 0185_BLG, 6/18/04.

David Paoli (Paoli & Shea), Missoula, and Shane Colton (Edmiston, Schermerhorn & Colton), Billings, for Balich; Randall Nelson (Nelson & Dahle), Billings, for MetLife.