FEDERAL COURT

Bloxham v Mountain West Farm Bureau Mutual Inc., 24 MFI 361, 3/199

IRSURANCE Criminal mischief proceedings insufficient "reasonable basis" to deny damage claim under auto liability policy, "per se" intentional act cases distinguished, no judicial estopped by admission of probable cause. bifurcation denied. Cebull.

Jack Bloxham drove his pickup on Meadowlake Country Club tennis courts, causing more than $131,000 damages. He was charged with criminal mischief. He submitted a claim for the damages to his auto liability insurer Mountain West.

Mountain West denied coverage on the basis of the exclusionary clause for intentional acts, relying on a newspaper report of the police investigation. The paper reported that Officer Thatcher rescounted that Bloxham "admitted that he lost a bet in golf and drove into and around the court knowingly and deliberately," he stated he realised that it was damaged the courts but continued to do so anyway. "The police report stated that Bloxham appeared intoxicated and relayed more details of the golf test as well as Bloxham's reaction that "things just happen" and his assurance that he would simply pay for the damage."

Mountain West did not see the police report until well into his litigation and after it had denied coverage and did not have a copy of Thatcher's affidavit until its lawyer provided one well into the litigation. Bloxham used asserting breach of contract and failure to investigate before denying coverage, with malice and in violation of the UTPA. Except for his purported statements to Thatcher he claimed simply denied intentionally or left acts.

At the outset of litigation he claimed that his actions were caused by misaligned poisoning from wrong signs; However, it appears that a report medical evidence would not support that defense and he has dropped it. He now asserts that his behavior was caused by a transient ischemic attack.

Although he initially paid not guilty to the mischief charge he eventually entered into a deterred prosecution agreement which he admitted that there was probable cause for his arrest. Details of this agreement were known to Mountain West by means of the newspaper reports. Mountain West requests summary judgment on the bad faith claim, asserting that it had reasonable basis to deny coverage. Alternatively it seeks bifurcation.

The Court agrees with Mountain West that the issue is not whether it conducted a reasonable investigation, but whether it had a reasonable basis in law and fact to deny the claim; however, the issue must be resolved against Mountain West because it has not shown, as a matter of law, that it had a reasonable basis. The "per se" cases which it relies on are distinguishable in that

Bloxham has never admitted to his intent in court or pled guilty. Although he has changed the medical basis he has always maintained that he was not sound of mind. Further, the deterred prosecution agreement merely concedes probable cause. That distinction from the per se cases is considerable.

Admission of probable cause is a far cry from any guilty plea. Outside of the "per se" intentional act cases, the Montana Supreme Court has consistently held that whether an insurer had a reasonable basis to deny coverage is a fact issue not general evidence to summary judgment. Pursuant to the language of §§ 13-19-24CP, I find a reasonable basis (1) that further must look only to facts known to the insurer before and up to the time of death.

Further, because it establishes a duty to "conduct a reasonable investigation based upon all available information" it would turn the statutory scheme on its head to allow an insurer to first deny coverage and later justify its decision with subsequently obtained information.

The Montana Supreme Court has not been faced with this question, and this Court declines to decide it at this juncture. Undoubtedly it will be resurrected at trial in the context of what evidence the jury may consider relative to the issues raised in this motion.

At this time the Court is prepared to find only that Mountain West has failed to show, as a matter of law, that it had a reasonable basis in law and fact to contest Bloxham's claim.

Nor should Bloxham be judicially estopped from arguing that his conduct was not intentional. Mountain West argues that he should not be permitted to concede in his criminal case existence of facts sufficient to allow inference of a probability that he committed an intentional crime, then argue in this civil case that it was unreasonable for Mountain West to have made the same inference in denying coverage. However, an admission of probable cause may not be inflated to the level up right of Mountain West.

Criminal defendants routinely concede probable causes, such as admission is not admission of guilt. Mountain West's motion for partial summary judgment denied.

Bifurcation would be undesirable since the issues are extremely intertwined. The issue of whether Mountain West had a duty to cover Bloxham's claim will require evidence of the intentional nature of his actions. Likewise, his intention is central to the UTPA claim. However, the Court will remain briefs on Mountain West's request to limit evidence of and reference to the UTPA claim during work (the and possibly other stages of trial).

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