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McVey v. USAA Casualty Insurance Co., 2013 MT 346

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A third-party claim triggers the insured’s protection against an insurer’s refusal to pay UM/UIM claims without conducting a reasonable investigation.

Linda McVey was involved in a car accident with Kent Blough on July 26, 2007. McVey sustained severe injuries. On July 27, 2007, Blough reported the accident to McVey’s insurer, USAA Casualty Insurance Co. (“USAA”). The adjuster determined McVey was the majority-at-fault party and paid Blough’s property damages.

McVey’s policy included property damage, medical payments, and UM/UIM coverage. USAA made auto collision and medical payments to McVey but refused to pay McVey under the UM/UIM coverage because its adjuster determined McVey was at fault. McVey filed suit against Blough on January 20, 2009, and the case settled for Blough’s policy limits. On May 26, 2010, USAA’s own expert reviewed the accident reconstruction reports prepared in McVey’s suit against Blough. The USAA expert determined Blough had been the majority-at-fault party and USAA paid McVey’s $300,000 UM/UIM policy limit on September 23, 2010.

McVey filed a complaint against USAA asserting USAA violated § 33–18–201(4) and § 33–18–242 of the Montana Unfair Trade Practices Act. Section 33–18–201(4) of the Montana Code Annotated prohibits an insurer from “refus[ing] to pay claims without conducting a reasonable investigation based upon all available information.” Section 33–18–242 provides that “[a]n insured or a third-party claimant has an independent cause of action against an insurer for actual damages” that arise from an insurer’s violation of § 33–18–201(4).

USAA filed for partial summary judgment, contending that the protections of § 33–18–242 apply only to “claimants,” and that McVey was not a “claimant” because Blough, a third party, had filed the claim with USAA. District Court Judge Brenda Gilbert granted USAA’s motion, which resolved the claim.
On appeal, the Montana Supreme Court found McVey was protected by § 33–18–201(4) and § 33–18–242, MCA, regardless of who filed the claim. The Court reversed the district court’s granting of partial summary judgment to USAA and remanded the case to determine whether USAA had actually conducted a reasonable investigation before refusing McVey’s UM/UIM claim.

Nothing in § 33–18–201(4) or § 33–18–242 indicates who has to file the claim for the statutes to apply. Thus an insured is protected against an insurer’s refusal to pay UM/UIM claims without conducting a reasonable investigation the moment a claim is filed by either the insured or a third party. The use of the phrase “claimants” in prior case law with reference to § 33–18–201(4) and § 33–18–242 was not intended to control the scope of the protections provided by those sections, or otherwise bar an “insured” from pursuing a claim pursuant to § 33–18–201(4) and § 33–18–242.

The Court reversed the district court’s grant of summary judgment because Blough filed a claim with USAA on July 27, 2007, the day after the accident. Consequently, a claim for purposes of § 33–18–201(4) had been filed and the provisions of § 33–18–201(4) applied to USAA’s action in adjusting the claim from that day forward. The fact that Blough rather than McVey filed the claim on July 27, 2007, does not preclude McVey, the insured, from invoking the protections of § 33–18–201(4) and § 33–18–242.

Montana practitioners should be aware of this case because it establishes that a third-party’s claim triggers an insured’s protection against an insurer’s refusal to pay UM/UIM claims without conducting a reasonable investigation.

Honorable Brenda Gilbert, District Court of the Sixth Judicial District, Park County.

For Appellee: David McLean and Christy S. McCann of Browning, Kaleczyc, Berry & Hoven, P.C., Missoula, Montana.