

SUPREME COURT OF NOVA SCOTIA

Citation: *Malloy v. Intact Insurance Company*, 2019 NSSC 131

Date: 20190429

Docket: HFX471170

Registry: Halifax

Between:

Shauna Vraielene Malloy

Plaintiff

v.

Intact Insurance Company/Intact Compagnie D'Assurance

Defendant

DECISION

Judge: The Honourable Justice Jamie S. Campbell

Heard: April 18, 2019, in Halifax, Nova Scotia

Counsel: Ansley C.M. Simpson, for the Plaintiff
J. Scott Barnett, for the Defendant

By the Court:

[1] Shauna Vraielene Malloy was injured in a car accident in October 2014. She applied for and got the statutory accident benefits from Intact Insurance. Intact denied reimbursement for a medical procedure. In December 2017 Ms. Malloy sued Intact claiming that they had improperly denied medical benefits under the policy. She claimed that Intact breached its duty of good faith in investigating her claim.

[2] Ms. Malloy's counsel requested that Intact disclose its policies, procedures, guidelines, internal documents and other documentation outlining how accident benefit claims are handled and resolved at Intact. Intact objects to providing that material.

Issue

[3] The issue, of course, is whether Intact is obliged to provide the documents. More specifically, the question is whether the pleadings contain specific allegations that would amount to bad faith on the part of Intact and to which the material sought is relevant.

The Meaning of "Relevant"

[4] Justice Moir's statement of principles governing relevancy, in *Saturley v. CIBC World Markets Inc.*, 2011 NSSC 4, makes it clear that the determination of relevancy for disclosure purposes is based on the meaning of relevance in evidence law generally. It is not a watered-down version, such as a "semblance of relevancy". The judge hearing the motion must determine whether the judge at trial would find the document to be relevant or irrelevant. It is relevant if it has probative value in relation to a live or material issue. The only way that the motions judge can make that determination is by referring to the statement of claim itself and the evidence available before the trial. Does the material being sought have probative value with respect to a claim made in the pleadings?

The Claim of Bad Faith

[5] Ms. Malloy has claimed that Intact breached its duty to act in utmost good faith in dealing with her claim. When assessing whether there has been a breach of that duty the question is whether the denial of the claim was "the result of the overwhelmingly inadequate handling of the claim, or the introduction of improper considerations into the claims process." *Fidler v. Sun Life Assurance of Canada*,

[2006] S.C.J. No. 30, para. 30, (SCC). The insurer is required to assess the merits of a claim in a balanced and reasonable way.

[6] Ms. Malloy's counsel says that the way in which Intact administered the claim must be judged against its own standards, policies, guidelines and procedures. The example offered is that if Intact's own policies required an independent medical interpretation in order to rebut the plaintiff's claim, and they failed to do so in this case, that would be relevant evidence to support the claim of bad faith.

Bald Assertions, Boiler-Plate Pleadings and Relevancy

[7] Intact argues that Ms. Malloy's claim amounts to not so much a bald allegation of bad faith, but allegations to which the sought materials are not relevant. The claim does not include any reference to the lack of policies or the failure of Intact to properly train or supervise those who were responsible for assessing claims. The claim does not assert that Intact failed to follow its own policies. Intact's internal policies and procedures are not part of the claim at all.

[8] There are clearly concerns with requiring disclosure of internal materials in the face of a simple allegation of bad faith. In *Contos v. Kingsway General Insurance Co.*, [2001] I.L.R. I-3975, Master Dash noted that caution, and said that if plaintiffs were to adopt as a standard practice the inclusion of bad faith claims they would turn relatively simple law suits into complex bad faith cases requiring substantial production and a lengthy trial.

If the pleadings are so bald as to constitute merely "boiler-plate" allegations, with no specific allegations of conduct on the part of the insurer which, if proven at trial, could result in a finding of bad faith I would not order production of the insurer's file on the basis that the file is not relevant to any issue pleaded. There must be specific allegations of acts constituting bad faith. A mere allegation that the claim for benefits was denied, or that the insurer made the wrong decision on the medical evidence would be insufficient. Para. 14

[9] The point is well taken.

[10] When the plaintiff puts forth nothing but a simple assertion of bad faith, claiming that the denial of the benefit was, in itself, an act of bad faith, there is nothing to which the internal documents being sought can be related to determine relevance. When the pleadings contain more specific allegations that the defendant did not adhere to the obligation of good faith, the insurer may be required to

disclose the internal documents about its policies, procedures and guidelines for assessing claims if they are relevant to the claim.

[11] In *Sathiyapalan v. Citadel General Assurance Co.*, [2004] O.J. No. 364 (S.C.J.), the plaintiff sought manuals and directives from the insurer. The plaintiff alleged that the bad faith was the denial itself, a deliberate attempt to avoid a meritorious claim and the adversarial position taken by the insurer. The plaintiff did not allege a failure, on the part of the insurer, to follow its own guidelines, directives or policies. The manual and directives were held to be not relevant to the issues pleaded.

[12] *Micciche v. Mittag*, [2001] O.J. No. 3386, is similar. The plaintiff sought the production of manuals, written policies, procedures, protocols, and guidelines that related to the manner in which the insurer administered claims. The plaintiff did not specifically plead bad faith but instead simply said that the insurer had acted in a manner that was “high-handed, arrogant, and irresponsible” and that its refusal to pay benefits should entitle her to punitive, aggravated and exemplary damages.

[13] Allegations of unspecified bad faith do not offer enough information upon which a motions judge can determine whether internal policy materials are relevant to a material fact in issue. In order to find policies and procedures to be relevant they must be probative of material fact in issue. The question then is whether those policies and procedures are probative with respect to a claim of bad faith when the claim neither specifically claims that there are no policies or that if there are policies that they have not been followed.

[14] Ms. Malloy’s Statement of Claim asserts that Intact has an obligation to act in good faith and has breached that duty. Paragraph 8 of the Statement of Claim sets out the particulars. It says that Intact failed to conduct reasonable assessments or investigations of Ms. Malloy’s claims and failed to conduct a fair and thorough adjudication of those claims. The Statement of Claim says that Intact denied the claim “in an arbitrary manner without consideration of all medical evidence or a fair and equitable application of the Policy.” It says that Intact allowed “a lay person(s) to interpret medical evidence while adjudicating the claim, Intact relied on the lay person(s) analysis of medical documentation and information in wrongly denying the claim.” The Statement of Claim says that Intact “ignored reports from Ms. Malloy’s treating physicians which demonstrated that Ms. Malloy required medical/rehabilitation expenses as defined by the Policy.”

[15] The claim by Ms. Malloy is neither “bald” nor “boiler-plate”. It is not a simple allegation of bad faith.

[16] It does not allege that Intact failed to have policies or procedures or that, if it did, it failed to follow those established procedures. Without knowing what those procedures or protocols were, or if they even existed, Ms. Malloy would not know whether they had been followed.

[17] The claim is that Intact failed to live up to its obligation of utmost good faith. The facts that are pleaded in support of that claim are that Intact failed to reasonably assess the claim by among other things, having medical information reviewed by a lay person and failing to consider reports from Ms. Malloy’s treating physicians. Evidence that Ms. Malloy’s claim was reviewed and assessed was not in compliance with Intact’s own procedures, would be relevant to determining whether Intact acted reasonably and therefore in the utmost good faith in dealing with her claim. The statement of claim makes the claim and sets out facts. The compliance or non-compliance with policies and procedures would be evidence to support those facts asserted in the statement of claim.

[18] The information sought is relevant to the proceeding and should be disclosed.

[19] Costs are awarded to the plaintiff in any event of the cause in the amount of \$500.

Campbell, J.