IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-3918
(Summary Calendar)

SHERI GOLDBERG,

Plaintiff-Appellant,

versus

JOHN P. GUFFNEY, JR., ET AL.,

Defendants,

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 91 3900 D)

June 3, 1993

Before KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM*:

In this diversity case, Plaintiff-Appellant Sheri Goldberg contends that her insurer, Defendant-Appellee State Farm Mutual Automobile Insurance Company (State Farm), acted arbitrarily and capriciously by not unconditionally tendering compensation to her when State Farm first learned of the possibility that it may have

---

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

had some liability under her uninsured/underinsured motorist (UM) policy. On appeal, Goldberg asserts that the district court erred in granting judgment in favor of State Farm after a bench trial. Finding no reversible error in the decision of the district court, we affirm.

I

FACTS

Goldberg was involved in an automobile accident with John Guffney, who all parties agree was at fault, on August 3, 1989. She suffered injuries to her cervical spine, left wrist, left ankle, and left knee.

Guffney maintained a liability insurance policy that would pay a maximum of $10,000 to the person or persons whom he injured while driving. Goldberg was insured by State Farm and maintained a UM policy that would pay her up to $100,000 if she were injured by someone who, like Guffney, did not have adequate insurance.

Beginning immediately after the accident, State Farm promptly paid all of Goldberg's medical bills, which had totaled $14,613.20 by the time this case came to trial. Some of Goldberg's injuries were severe, and she apparently has not fully recovered. On March 5, 1990, Goldberg's attorney wrote to State Farm advising it of Goldberg's legal representation. In that letter, the attorney "stat[ed] [his] understanding that State Farm provided uninsured motorist insurance." As a result of its receipt of the attorney's letter, State Farm assigned Goldberg's file to an adjuster and

opened an internal account to provide payment for Goldberg's injuries. That took place at the end of March 1990.

On July 30, 1990, three days before the prescriptive period (statute of limitations) on Goldberg's tort suit would have run, she filed suit in state court against Guffney, his insurer, and State Farm. After Guffney's insurer paid Goldberg the limits of its policy, she released both Guffney and the insurer. State Farm then removed the lawsuit to federal court.

Goldberg made a demand for payment from State Farm under her UM policy on September 19, 1990. On October 18, 1990, Goldberg's attorney provided State Farm with affidavits to demonstrate that the limit of Guffney's only liability insurance policy was $10,000. In response to Goldberg's demand, on November 11, 1990, State Farm unconditionally tendered her a payment of $35,000. After Goldberg underwent more treatment and it became clear that her injuries were more extensive than first appeared, State Farm unconditionally tendered an additional $10,000. That was on August 7, 1991.

Nonetheless, Goldberg proceeded with her lawsuit against State Farm, claiming that, under Louisiana insurance regulations,[1] State Farm's delay in paying the claims was unreasonable, and that the company acted arbitrarily and capriciously in not making sufficiently large payments. Under Louisiana law, an insurance company that denies or delays payment of a claim in an arbitrary and capricious manner is subject to penalties and attorneys fees.

---

[1] See LA. REV. STAT. ANN. §§ 22:658, 22:1220 (West Supp. 1993).

After the non-jury trial,[2] the district court held against Goldberg on her claim that State Farm had acted in an arbitrary and capricious manner in not paying her claim until November 1990. The court specifically found that "[t]here was no arbitrary or capricious failure of State Farm to pay under the UM provisions of its policy." The court also found that "[n]o demand was made for payment under the UM provisions of the policy until plaintiff's attorney did so by letter on September 19, 1990," and that Goldberg's claims were timely paid under the provisions of Louisiana law regulating insurance companies' payments of claims and possible penalties.

The court set Goldberg's total damages from the accident at $69,000. As she had been paid a total of $54,000 by State Farm and Guffney's insurance company, State Farm was ordered to pay her the difference plus interest from the date of her demand. Goldberg timely appealed the court's decision that State Farm had not acted in an arbitrary and capricious manner.

II

ANALYSIS

As noted above, this is an appeal of a judgment rendered in a bench trial. In such cases, we review findings of fact for clear error.[3] As we do in other contexts, however, we review conclusions

---

[2] The case was tried to a U.S. magistrate on the consent of both parties. See 28 U.S.C. § 636(c).

[3] See FED. R. CIV. P. 52(a).

of law de novo.[4]

Louisiana regulates insurance companies to ensure that insureds receive prompt payment of claims. Describing the procedures that insurance companies must follow, the Louisiana Supreme Court has stated:

> A claimant for penalties and attorneys fees under the statute has the burden of proving that the insurer failed to pay the claim within 60 days after receiving "satisfactory proof of loss" of the claim, and that the insurer was arbitrary and capricious in failing to pay.[5]

A "satisfactory proof of loss" under § 22:658 "is that which is sufficient to fully apprise the insurer of the insured's claim."[6] An insured fully apprises the insurer of a claim))i.e., establishes a "satisfactory proof of the loss"))for purposes of an uninsured/ underinsured motorists claim by establishing that

> the insurer received sufficient facts which fully apprise the insurer that (1) the owner or operator of the other vehicle involved in the accident was uninsured or underinsured; (2) that [sic] he was at fault; (3) that [sic] such fault gave rise to damages; and (4) establish the extent of those damages.[7]

The McDill court stated that when a plaintiff seeks penalties and attorneys fees under § 22:658, "[t]he general issue . . . is whether the plaintiff carried his burden of providing [the insurer]

---

[4] See Pullman Standard v. Swint, 456 U.S. 273, 287 (1982).

[5] McDill v. Utica Mut. Ins. Co., 475 So. 2d 1085, 1089 (La. 1985).

[6] Id. (citing Hart v. Allstate Ins. Co., 437 So. 2d 823 (La. 1983))(emphasis added).

[7] Id. (citing Hart, 437 So. 2d at 828).

with 'sufficient proofs of loss' under the statute."[8] The controlling issue in the instant case, as asserted by Goldberg, is whether her attorney's March 5, 1990 letter, and State Farm's preliminary investigation in response to that letter, fully apprised State Farm of its obligation to tender payments unconditionally under the UM policy such that State Farm had an immediate obligation to pay.

It cannot be seriously questioned that responsible persons at State Farm realized with a high degree of certainty that the company would be subject to some liability under Goldberg's UM policy. The March 5, 1990 letter triggered State Farm's inquiry, and that inquiry produced State Farm's belief that Guffney's insurance ceiling was $10,000. As State Farm paid more than that amount in medical payments alone, it surely knew of its impending liability; it is inconceivable that the quantum of Goldberg's personal injury damages would be less than her medical payments in this situation.

Nevertheless, the simple fact remains that, as found by the district court, Goldberg made no demand for payment on State Farm until September 19, 1990. The March 5, 1990 letter, which merely informed State Farm of Goldberg's legal representation and mentioned the UM policy, cannot be construed as a demand (or even a request) for payment. Making a demand or request for payment was not a purpose expressed or implied in the March 5, 1990 letter. That letter did not assert that Guffney was underinsured; it did

[8] Id.

not discuss or even hint at the quantum of damages; and it did not mention the other two criteria listed in the Hart and McGill cases.

Goldberg argues that if the March 5, 1990 letter was not sufficient, surely the filing of the lawsuit on July 30, 1990, gave State Farm adequate notice. Even if we grant arguendo that the lawsuit constituted notice, that is not the equivalent of a demand for payment sufficient to implicate § 22:658. True, every lawsuit for a money judgment is a demand for payment in the broadest sense of the phrase, but here that is not enough to satisfy that component as contemplated in Hart and McGill. Goldberg sued all possible defendants to interrupt (toll) the prescriptive period. Preserving her right to sue State Farm and the other defendants was simply not the equivalent of making a demand for payment.

The district court's finding that Goldberg's first demand for payment was made on September 19, 1990 was not clearly erroneous; neither was it legal error. Moreover, in response to this letter, State Farm timely requested "evidence sufficient to fully apprise [it] of the insured's claim"[9])i.e., evidence of Guffney's insurance limits. Once Goldberg's affidavits concerning those limits were provided to State Farm[10])on October 18, 1990))payment in a bona fide amount was tendered within thirty days.[11]

---

[9] Hart, 437 So. 2d at 828.

[10] We agree with the district court that when the affidavits were proffered by Goldberg, she satisfied her burden as to all the criteria listed in Hart and McDill.

[11] An amendment to § 22:658, which changed the period in which a payment must be made from sixty to thirty days, became effective July 4, 1990))just before the demand in this case. See

We note that the statute in question does not speak in terms of the insured making a "demand," but merely employs the terms "within thirty days after receipt of satisfactory proofs of loss."[12] We see no sensible way to read this statute, however, that does not necessitate at least a request for payment by the insured to begin the running of the thirty day clock.[13] In the instant case, Goldberg did nothing that would constitute a demand or request for payment as contemplated by the applicable Louisiana law until September; and after that demand was completed by the submission of requisite proof in the form of the affidavits, payment was timely tendered.

III

CONCLUSION

The district court found the payments that State Farm tendered unconditionally to Goldberg to have been timely in the context of § 22:658 and that any delay experienced was not due to arbitrary and capricious activity on the part of State Farm. After a thorough review of the record before us, the Louisiana statute at

---

LA. REV. STAT. ANN. § 22:658 (West Supp. 1993)(noted in the historical and statutory notes under "1990 Legislation").

[12] LA. REV. STAT. ANN. § 22:658(A)(1).

[13] It is clear that procedures that insureds follow in order to give notice of an accident to an insurer, such as the filing of a "proof of loss" form, do not trigger the running of the thirty day clock. Although the State Farm was given notice of the accident))and in fact paid all of Goldberg's medical bills))nothing was filed that gave State Farm notice of Goldberg's demand for payment until September.

issue, and the cases interpreting that statute, we discern no reversible error in the factual findings or legal interpretations of the district court.

AFFIRMED.