Judge Upholds Award Against State Farm

By Deborah Lohse
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A state court judge in Boise, Idaho, upheld a $9.5 million punitive-damages award against **State Farm Mutual Automobile Insurance** Co., saying the insurer knew its refusal to pay a woman's medical claim was based at least partly on a "completely bogus" outside medical review.

The Aug. 6 decision by Fourth Circuit Judge D. Duff McKee upholds an April jury verdict. The case centered on a State Farm adjuster's treatment of a 1992 claim by Cindy Robinson, a State Farm policyholder who suffered a herniated disk when her car lost a wheel as she was driving on a highway in early 1992.

The adjuster allegedly initially refused to pay most of her medical expenses, which amounted to more than her policy limit of $25,000. The adjuster didn't officially deny the claim, the judge said, but the adjuster said he had insufficient information to support payment. He determined the claim wasn't well-founded, the judge said, based at first only on his own "intuition" that the woman's injuries weren't caused by the accident she described.

To bolster that decision, the adjuster later allegedly got medical opinions from a utilization-review company that the judge said evidence overwhelmingly indicated was "a completely bogus operation" that "prepared 'cookie cutter' reports of stock phrases, assembled on a computer, supporting the denial of claims by insurance companies."

The evidence was that "State Farm management knew of the fact that the reports from the review agency utilized in this case were false, that they were not signed by physicians as represented, and that, nevertheless, State Farm permitted and directed the use of such agencies anyway," the judge said.

Judge McKee didn't identify the firm. Ms. Robinson's complaint said the firm was Medical Claims Review Services (MCRS) of Bethesda, Md., which wasn't named as a defendant. Dr. Ronald E. Gots, former chairman of MCRS, strongly disputes the judge's characterization of the firm, saying all reviews were overseen and carried out by physicians or other board-certified professionals. Dr. Gots, who has since sold the company's software and left the business, said he was never asked to testify at the trial.

State Farm, based in Bloomington, Ill., denies wrongdoing in the matter, and has filed a notice of appeal with the Idaho supreme court. A spokesman said State Farm never got to present evidence that less than 5% of all State Farm Idaho policyholders' medical claims from 1992 to early 1995 were sent for review by claims-review companies. Moreover, State Farm said that in most such reviewed cases, State Farm paid more than recommended.

State Farm had sought to have the verdict thrown out or reduced, arguing in part that the punitive damages were far out of proportion to the other damages— $100,000 for intentional infliction of emotional distress and $2,500 in other damages — awarded by the jury.

The decision has raised the antennae of some plaintiffs' attorneys, who note an increase in insurers' use of supposedly independent medical-review companies— dubbed "paper review" companies by the plaintiffs bar because many don't examine the victims, said Richard Friedman, an Anchorage, Alaska, attorney for Ms. Robinson.

"All of the insurance companies in the country are selling the concept of independent medical reviews, and some may be frauds," added Eugene Anderson, an attorney at **Anderson Kill & Olick**, a New York law firm that specializes in representing policyholders against insurers and wasn't involved in the case.

In the Robinson case, the adjuster also sought an opinion from a local physician "closely connected to insurance defense cases," who also denied the claim, according to the judge's decision.

Using a physician known to favor insurance companies "may be appropriate" when the insurer is examining claims made by a person injured by someone insured by State Farm, or so-called "third party claimants," the judge said. But using such a "captive" physician to examine someone insured by State Farm, or a "first party claimant," isn't.

"The company cannot place its own interests ahead of its own insured in evaluating a first-party claim, which is what the evidence clearly demonstrates occurred in this case," the decision said.