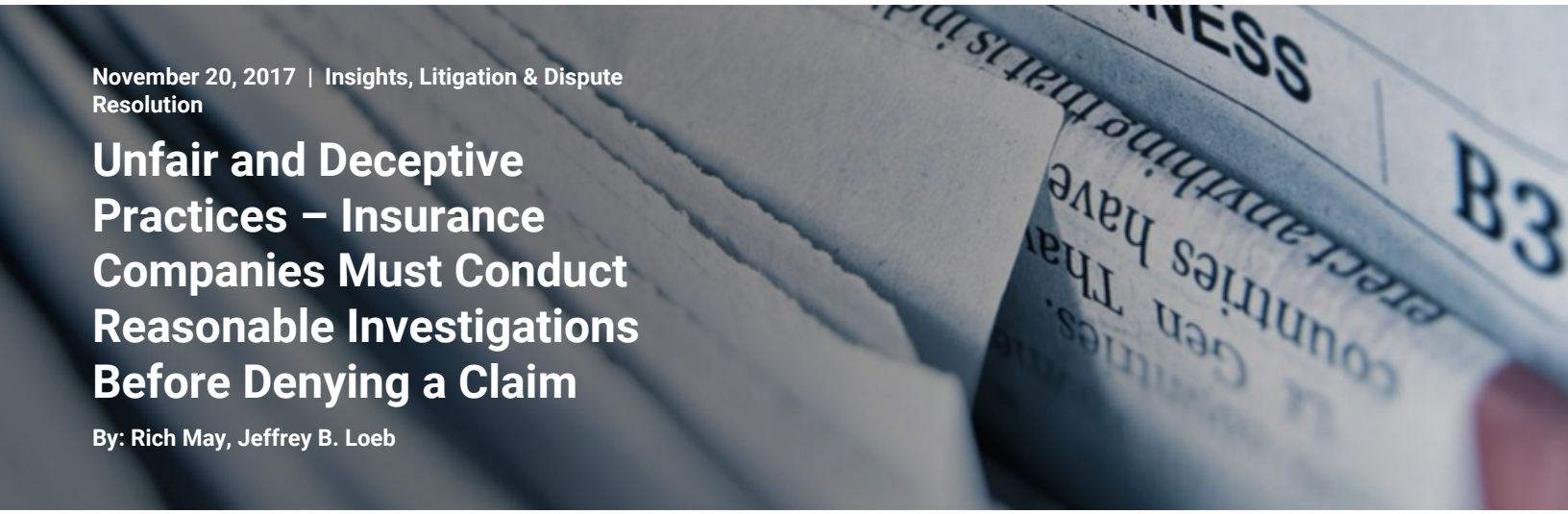

November 20, 2017 | Insights, Litigation & Dispute Resolution

Unfair and Deceptive Practices – Insurance Companies Must Conduct Reasonable Investigations Before Denying a Claim

By: Rich May, Jeffrey B. Loeb

Massachusetts General Laws Chapter 93A and Chapter 176D generally prohibit insurance companies from engaging in "unfair or deceptive acts or practices" and specifically require them to conduct a "reasonable investigation based on all available information" before refusing to pay a claim.

If an insurance company violates these laws, it can be subject to multiple damages and the opposing party's fees and costs. Recently, the United States District Court for the District of Massachusetts dealt with this issue in Continental Western Insurance Company, Inc. v. Preferred Mutual Insurance Company, (No. 3:14-cv-14226-MGM). In that case, the District Court concluded that an insurance company used its investigation to justify a predetermined and biased denial of coverage.

The basic facts in the Continental Western case will be familiar to claim handlers and attorneys involved in insurance litigation. A question of coverage arose on a large claim. A claim handler pushed a particular narrative and recommended rescission. Retained counsel was less certain, but ended up being persuaded by the claim handler, and the insured was denied coverage. The District Court, however, ruled for the insured finding that no meaningful or reasonable investigation had occurred, that the claim handler prematurely reached a conclusion on coverage and manipulated evidence to support his preferred outcome, and that the insurance company had displayed hostility including ageism towards the insured.

The lessons from this ruling are several. For insurance companies and claim handlers the District Court's ruling reinforces the importance of conducting thorough and unbiased investigations. Investigations should consider all pieces of evidence and not selectively rely on only the most favorable items. Furthermore, the District Court ruled that it is "unfair and deceptive for [the insurance company] to interfere with the investigation and opinion of independent counsel." Insurers will need to be careful to not weigh in with their own opinions when an independent counsel is conducting a coverage investigation. The more

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independent the investigation, the more credible it will be to a court.

As for attorneys retained by insurance companies, this case is a reminder to be very conscious of the pitfalls of this relationship. Such attorneys must maintain their independence and be guarded against an overly involved or assertive insurer. These rules serve important and practical purposes, and maintaining independence will serve all parties best.

Lastly, insureds should be aware of their rights and the duties owed to them by both insurance companies and the attorneys retained to handle their claims. Insurance companies cannot dismiss claims too hastily, and attorneys must truly treat the insureds as their clients.

The case is still being litigated post-judgment, however, this ruling is instructive to insureds, insurers, and attorneys alike.

Anyone with questions on insurance law, the duty of insurance companies, or the rights of insured generally, can contact Rich May, P.C. attorneys Nathaniel Donoghue and Jeffrey Loeb.

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