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# Nevada Supreme Court upholds $200 million jury verdict against health insurer

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In *Sierra Health and Life Ins. Co. v. Eskew*, 2024 WL3665443 (2024), an unpublished opinion, the Nevada Supreme Court upheld a jury verdict awarding $40 Million in compensatory and $160 Million in punitive damages against a health insurer based upon its bad faith refusal to cover lung cancer treatment.

The matter stems from the 2017 death of Bill Eskew ("Eskew") due to lung cancer. Eskew's estate sued Sierra Health and Life Insurance company ("SHL") for insurance bad faith because SHL denied his recommended lung cancer treatment claiming it was not "medically necessary" and therefore not covered under his policy.

After a two-phase jury trial – the first phase finding that Eskew's estate was entitled to $40 Million in compensatory damages, and a second phase wherein the jury awarded $160 Million in punitive damages – SHL filed a renewed motion for judgment as a matter of law, arguing that there was insufficient evidence to establish bad faith, as well as a motion for a new trial or remitter. The district court denied both motions; SHL appealed.

The Nevada Supreme Court's recitation of the facts of the case is telling of its view of the insurer's conduct. The court discussed that SHL determined proton beam radiation therapy was not covered by Eskew's health insurance plan; explained that proton therapy, Eskew's recommended lung cancer treatment, is a targeted form of cancer treatment; detailed that Eskew's doctors agreed that proton therapy was necessary to limit the risk of damage to the organs surrounding his lungs; and stated that "[b]ecause SHL refused to cover proton therapy, Bill received an alternative treatment which damaged his esophagus, causing pain and suffering for the remainder of his life."

SHL argued that Eskew failed to prove the elements of an insurance bad faith claim.

The court explained that to establish bad faith under Nevada law, a plaintiff must show that the insurer had no reasonable basis for disputing coverage, and that the insurer knew or recklessly disregarded the fact that there was no reasonable basis for disputing coverage. SHL argued that since Eskew's policy only provided "medically necessary" therapeutic services, and based on scientific data, proton therapy was not medically necessary to treat lung cancer, SNL had a reasonable basis to deny coverage and could not be in bad faith.

The Nevada Supreme Court disagreed, noting the jury was presented with substantial evidence from which it could conclude that SHL engaged in bad faith by denying the claim as not medically necessary. The court explained the jury was properly instructed that an "insurer may not reasonably and in good faith deny a prior authorization claim without thoroughly investigating the claim," and found that the jury was provided with evidence showing that SHL relied primarily on the medical policy, and not a thorough investigation of Eskew's specific needs, in determining that proton therapy was not medically necessary.

Further, the court found that the jury was properly instructed on the type of conduct which may expose a party to liability for punitive damages, and there was substantial clear and convincing evidence from which the jury could find that SHL acted with oppression.

Similarly, the court discounted SHL's argument that the district court erred by denying its motion for a new trial or remittitur because of the erroneous admission of prejudicial evidence led the jury to return a verdict based on passion and prejudice rather than on the law and the facts, as evidenced by the high compensatory and punitive damages awards.

SHL argued that it was unfairly prejudiced by the district court's abuse of discretion in admitting evidence related to investment by a corporate relative of SHL in a proton therapy center; which evidence, the court noted, was used as part of Eskew's overall strategy to prove that the effectiveness of proton therapy was widely accepted, not only by doctors and insurers unassociated with SHL, but by SHL's parent company upon whose policy SHL based its denial of coverage.

The court found that the evidence – investment by a corporate relative of SHL in a proton therapy center which, the court deemed was used to prove that the effectiveness of proton therapy was widely accepted – was relevant to SHL's subjective knowledge of the reasonableness of its policy excluding proton therapy for lung cancer from coverage, such that the probative value of this evidence was substantially outweighed by the danger of unfair prejudice.

The court's holding illustrates its disdain for SHL's handling of Eskew's claims, finding that the jury was provided with substantial evidence demonstrating the extent of Eskew's pain and suffering; and the jury was also provided with substantial evidence of SHL's conduct in mishandling the claim: "We conclude that the high compensatory and punitive damages award does not evince a verdict based on passion and prejudice; it merely reflects the jury's valuation of the extensive pain and suffering experienced by Eskew due to the denial of coverage and the level of blameworthiness of SHL's conduct."

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