

MEALEY'S™ LITIGATION REPORT

# Insurance Bad Faith

## **Ricky's Believe It Or Not**

*by*  
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# Commentary

## Ricky's Believe It Or Not

By

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As an attorney for more than sixteen years, and a practitioner of insurance bad faith for nearly eleven years, I have seen virtually every kind of bad faith set-up one could imagine. I have shared my observations through various articles published in this fine periodical as well as other publications. The law of insurer bad faith is obviously one which is constantly in flux. Therefore, it would be a simple matter to wax eloquent upon the latest pronouncement from the high court of one of our many state and federal courts. However, I feel compelled to digress from the usual stately discussion of the intricacies of bad-faith law and share some of the more amusing things I have come across during my review of tens of thousands of documents contained in claim files, medical records and correspondence, done in connection with representing insurers in this field.

Beginning some eight years ago, I began recording those "claim file gems" which I came across occasionally. The list has grown to some seventeen pages of quite amusing material, separated by category, and consisting of "excerpts of documents authored by attorneys," "deposition excerpts," "excerpts from medical records" and "excerpts from claim files." The four

categories are too lengthy for this commentary. Therefore, I present the best of the first category (along with my editorial remarks) for your amusement.

Parenthetically, I am the third of three generations of lawyers given the moniker "Julius Frederick Parker." My grandfather was known as "Julius" and my late father as "Fred." That left only "Rick" for me. My mother, however, called me "Ricky," as did everyone else I knew until I changed schools in the sixth grade and took the opportunity to lose the "y" and simply become "Rick." However, many people still call me "Ricky," so I thought calling these gems "Ricky's Believe it or Not" would be appropriate. I hope you enjoy them.

### Actual Sentences From Documents Authorized By Attorneys (Or To Which They Have At Least Affixed Their Signatures)

- From a report to a claims adjuster from retained defense counsel:

"He was on his way home from he believed playing golf with his wife in his 2006 Buick Lucerne."

*I didn't know you could play golf in a Buick Lucerne.*

- From a report to a claims adjuster from retained defense counsel:

"Plaintiff described his injuries as head swelling up like a baseball bat ...."

*So his head got significantly narrower?*

- Underneath the attorney's signature in a letter seeking medical records in a wrongful death case:

"cc: [John Doe], deceased"

*I wonder where they delivered the carbon copy of that letter.*

- From a mediation statement regarding an accident which occurred in St. Petersburg, Florida:

"This matter arises out of an automobile accident that occurred on April 14, 2005 at approximately 12:40 a.m. The weather was listed as clear, sunny and dry."

*I don't even think St. Petersburg, Russia would be clear and sunny 40 minutes past midnight on April 14.*

- From a pre-mediation report from counsel to an insurance adjuster:

"...She doesn't know the reason why a lumbar MRI was performed two to five days prior to the April 14 accident. Presumably because of pain in the low back. There were no restrictions because of low back pain. She does have a friend paint her toenails, [Jane Doe]. She took no evasive action prior to the accident."

*Facts of the accident, facts of the accident, injuries, **toenails!**, facts of the accident...*

Further in the same letter:

"... She doesn't know if there is any UM coverage on the state vehicle. Driving is the most demanding part of her current job. A case of beer might weigh 10 pounds. The printer is less than 10 pounds. In her Florida application for no-fault benefits, it said that the April 14, 2005 accident was not related to work."

*Insurance, job duties, **beer!**, facts of the accident...*

- From a defense attorney's status report:

"As a follow up to our recent conference, I recently traveled to Atlanta, Florida to meet with our expert ...."

*When did Atlanta secede from Georgia?*

- From a defense attorney's post-mediation report:

"Plaintiff's opening demand for settlement was for \$950,000.00, claiming \$200,000.00 for attorney fees the next amount which a

number was not give to the [co-plaintiff] and the lowest amount going to the 13 individual plaintiffs. We countered with \$26,000.00 letting the Plaintiff's know attorney fees are not covered under the policy."

*This person not only graduated from law school but managed to pass the bar exam?*

- From a defense attorney's Answer and Affirmative Defenses:

As its Seventh Affirmative Defense, Defendant would state that the following language from the prior policy applies. (Policy Jacket, p. 23)

#### 4. **Renewal**

*Unless within 45 days of the policy effective date, **we** mail or deliver a notice of cancellation, to **you**, **we** agree:*

*b. to renew this policy for the next policy period at the rates then in effect unless we mail to you written notice period at the rates then in effect unless we mail to **you** written notice to **our** intention not to renew. The notice will be mailed to **your** last known address at least 45 days before the end of the current policy and renew are void.*

*These agreements to continue to renew are void.*

*a. If **you** fail to pay the premium when due. (Italics not in original)*

*Where do I start? Reverse alphabetized policy? Sentence fragments? Gibberish? The fact that this language was copied by one person and proofread by a licensed attorney?*

- From a defense attorney's summary of a deposition:

"Mr. [Witness] did not know how old the building was, but it was there before they moved in in 1992."

*God, I hope so. I can't imagine how difficult it would be to move into a building before it exists.*

- Later in the same letter:

"Mr. [Witness] did not know the exact breakdown of the claim for loss of business income for the times that the bathrooms were closed or when the toilets backed up or overflowed.

He said it could include the loss in reference to how many customers don't go to the restaurant because of the incident, or the cost of stopping for a certain item [sic] and fixing it up to put it back up and how much they lost in that aspect."

*Oh, of course. I get it now.*

- From a defense attorney's pre-mediation liability analysis to an insurer:

"The Exhibit A and A which were provided as a part of [Plaintiff's] Second deposition on March 14, 2012, there is a reference to the HDS [xxxx] and the allegation that 21 homes are the HDS [xxxx]."

*What?*

- From a Motion in Limine submitted in a personal injury case:

"The facts, if adjudicated, are so prejudicial as to require a mistrial and thus, the Court should enter an Order in Limine prohibiting reference to these facts barring presentation outside of the presence of the jury."

*Adjudicated?*

*So if I understand correctly, you want the court to prohibit reference to these facts thereby barring presentation of them outside the presence of the jury? Therefore, the facts that you don't want the jury to hear should only be presented in the presence of the jury? Got it.*

- In a separate Motion in Limine filed by the same attorney in the same case:

"The facts, if adduced, are so prejudicial as to require a mistrial and thus, the Court should enter an Order in Limine prohibiting reference to these facts barring presentation outside of the presence of the jury and permission of the court."

*What?*

- From a defense counsel's report on plaintiff's deposition:

"[Plaintiff] had hip surgery on the right at Tampa General Hospital and received three pins in his hip. He does not know when this was performed and he thinks it was while he was still sedated."

*Really now? Do you think he'd have remembered it if it happened while he wasn't sedated?*

- From later in the same letter:

"[Plaintiff] also sustained a lacerated liver and kidney damage which wasn't working."

*Que? Nothing worse than kidney damage that isn't working.*

- From a summary of medical records received by defense counsel to an adjuster:

"At her initial visit, she had complaints of pain in her low and upper back as well as her right leg and knee and pain in her muscles were moving."

*Of course it. . . . .were, I mean they . . . . .was. Huh?*

- From the same attorney to the same adjuster in a separate letter:

"... The treatment notes end on September 17, 2007. It is unclear whether this is the last day that she suffered treatment at [ACME] Chiropractic as this may not be the entire file (emphasis added). . . ."

*Quite a ringing endorsement of chiropractic treatment! Poor suffering patients.*

- From a demand letter from a plaintiff's attorney:

"SIGNED IN MR. [ATTORNEYS] ABSENCE TO EXPEDiate."

*Really? Too much trouble to proofread a stamp which will be used repeatedly, memorializing forever the lack of an apostrophe to indicate the possessive noun and the creation of an entirely new word: expediate.*

- From a post-hearing report to an adjuster:

"Per Florida law, the Order denying the Motion to Enforce Settlement Agreement is not the type of order that one can appeal now. It is not a non-final order that is not appealable as a matter of right. It is also not the type of non-final order that would allow one to file a writ of certiorari since there is no irreparable harm (the defense of a lawsuit and associated costs and attorney's fees is not

irreparable harm in Florida) and there is a right to appeal at the end of the case.”

*I do not non-understand what he is not saying.*

- From a defense pre-trial report to an adjuster:

“He used crutches thereafter. He does not use crutches at that time, but brought a crutch with him when he knows he will be walking more than a short distance.”

*Of course he did. . . . . does. . . . . will.*

Later in the same paragraph:

“Additionally, he began to use a whirlpool to do exercises shortly after beginning twice per week.”

*What?*

- From a report from defense counsel on a deposition:

“When asked if she could specifically say that she had no knowledge concerning any of the water intrusion, her answer was basically I have no recollection of that ever being said.”

*Well, that clears it up.*

- From a defense counsel’s analysis of liability in a wrongful death case:

“Pier reviews or independent medical examinations: None necessary.”

*I would have to agree that reviewing a dock would not be much help here.*

- From a defense counsel’s analysis of a personal injury case:

“The listed date of the accident is April 29, 2011, and indicates the injury occurred while ‘cutting limb off tree’ after he ‘fell to ground from tree while cutting limb.’”

*Strange that he would still be cutting the limb after he already fell out of the tree.*

- From a plaintiff’s counsel’s demand package:

“Carelessness is commonly defined as a person who acts or fails to act carelessly or without due caution and circumspection in a manner so as to endanger, or be likely to endanger a person or property.”

*I’m pretty sure that’s not how the jury instruction reads. Carelessness is a person? It is defined as failing to act carelessly? Clear as a bell!*

- From a plaintiff’s counsel’s letter to an insurer:

“At this point I think that your actions are inappropriate based on my client’s honest representations and your attempting to sneak out of coverage because of a technicality are irreprehensible.”

*So the insurance company’s actions were not reprehensible? Or is that a contraction for irreparably reprehensible? Regardless, it’s an odd sentence.*

**Conclusion**

These documents were seen by many people before coming to me. Treat every document which bears your name as though it were to become Exhibit “A” in a lawsuit. If you affix your signature to a letter, you are claiming authorship, whether you proof-read it or not. ■

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