SANDBERG PHOENIX

BAD FAITH BLOG

No Assignment, No Bad Faith: Rhode Island Supreme Court Finds Insurer Has No Duty to Third Party Claimant Unless There is an Assignment by the Insured

AUTHOR: AARON FRENCH

CONTRIBUTOR: STEPHEN MURPHY

Automobile liability insurer brought action against its insured, an injured third-party claimant and claimant's parents for declaratory judgment that it had no obligation to pay sums beyond the policy limits. Third-party claimant and his parents counterclaimed for declaratory relief. The Superior Court entered judgment in favor of the insurer. After appeal, the Rhode Island Supreme Court held the insurer owed no duty to third-party claimant and his parents to act in a reasonable manner and in good faith in settling claim.

Third-party claimant, who was 11 years old, was struck by a car driven by insurer's insured. The insured had a $25,000 per person policy limits. The claimants provided the insurer with medical records and hospital bills. Insurer investigated the claim and determined its insured was not at fault for the injuries and therefore, it would not make any offers on the case.

There was no further communication between the claimants and the insurer for eight years; however, new counsel for the claimants reached back out to the insurer because the statute of limitations was about to run. New counsel for the claimants requested a copy of the policy and also provided additional medical records and bills totaling approximately $80,000.

The insurer could not locate a copy of the insurance policy; however, claimant made a settlement demand of $300,000. The claimants argued that the insured was liable for the policy limit and because the insurer had failed to previously offer its policy limits, the insurer would be liable for all interest over and above the policy limits and all damages over and above the policy limits in accordance with the *Asermely v. Allstate Insurance Company*, 728 A.2d 461 (R.I. 1999) case.

The insurer offered its $25,000 policy limit on behalf of its insured. The offer was rejected and the claimants filed suit against the insurer's insured. Subsequently, the insurer filed a declaratory judgment action naming its insured and the claimants as defendants. The insured requested declaratory relief that it had no duty to pay interest beyond its policy limits and no duty to pay the claimants anything beyond its policy limits on any judgment. The claimants filed a counterclaim alleging the insurer was liable for pre-judgment interest and all damages over and above any provable policy limit. The insured submitted an answer to the declaratory judgment complaint, but only indirectly participated and did not appeal. Cross motions for summary judgment in the declaratory judgment action were filed and the Superior Court found in favor of the insurer.

On appeal, the claimants argued the insurer had a duty to affirmatively settle an insurance claim on behalf of its insured, which was established in *Asermely* and discussed in subsequent cases. Specifically, the claimants attempted to argue that Rhode Island law supported its contention that a duty of good faith and fair dealing runs from the insurer to the third-party claimant regardless of whether there has been any assignment of the insured's rights.

The Rhode Island Supreme Court clarified that in all the cases cited by the claimants, there was either an assignment of rights from the insured to claimants or it was a first party claim involving settlement between the insurer and insured. The Rhode Island Supreme Court further clarified it did not extend any duty of good faith and fair dealing or fiduciary obligation to a claimant given the claimant and the insurer are adversarial. Furthermore, the Rhode Island Supreme Court distinguished the *Asermely* case because the claimants here made no offer within the policy limits to settle.

Attorneys or claims professionals handling claims in Rhode Island would be served well by reviewing the opinion in this case because it provides a good overview and clarification of Rhode Island bad faith law.