

Massachusetts Appellate Court Holds

Insurer Liable for Unfair Settlement

Practices After Its Insureds' Liability

Became Reasonably Clear During Trial

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After an argument over a barstool at a restaurant culminated into an exchange of blows leaving Robert Chiulli with a traumatic brain injury, Mr. Chiulli sued the restaurant owner and corporate manager (collectively "the insureds") in federal court. The insureds had a liability policy with Liberty Mutual Insurance that provided primary coverage up to \$1 million and an excess policy with Everest Re Group, Ltd. The federal jury concluded the insureds were ninety percent at fault for the plaintiff's injuries and awarded compensatory damages of approximately \$4.5 million. After the verdict, the plaintiff sent a demand letter to the insurers requesting \$5,701,822.25 to resolve the federal case and seeking \$10 million to release the unfair settlement claims. The excess insurer offered \$5,507,597.60, but the primary insurer denied any liability. Thereafter, the plaintiff asserted unfair practices claims pursuant to G. L. c. 93A in state court alleging the primary insurer failed to effectuate a prompt, fair, and equitable settlement of the federal case.

In the trial judge's view, the insurer did not realistically assess the plaintiff's case and overestimated the insureds' own likelihood of success. The judge concluded that the insureds' liability became reasonably clear after closing arguments in the federal matter and that the primary insurer's refusal to tender its policy limit until after the excess insurer insisted it do so injured the plaintiff. Moreover, after liability became reasonably clear, the primary insurer used the plaintiff's financial condition "as a negotiating lever" and "hoped that his deteriorated financial condition would lead to more favorable settlement terms." The trial judge assessed nominal damages of \$25 and held that the violation was not willful or knowing. Both parties appealed.

The Massachusetts Appellate Court found no basis to disturb the determinations that the insureds' liability was reasonably clear by the time the federal case was submitted to the jury and that the plaintiff was injured by the unfair insurance settlement practices. A reasonable insurer would have made an objective review of all the evidence and concluded that liability and damages had become reasonably clear. Additionally, requiring the insurer to effectuate a prompt, fair, and equitable settlement once liability was reasonably clear did not violate the insureds' right to a jury trial because the former is based on an objective assessment of the facts known or available at the time and is independent of how a jury views the insured's liability. Finally, the appellate court disagreed with the trial court that the violation was not willful and knowing because the primary insurer knew it had little chance of success on appeal. Rather than fulfill its obligation, the appellate court found the insurer made the deliberate choice to exploit the plaintiff's financial distress for its own gain. Thus, according to the appellate court, nothing about this conduct could be described as anything short of willful or knowing.

[Click here](#) for the court's decision in *Robert Chiulli v. Liberty Mutual Insurance, Inc., & another*, 97 Mass.App.Ct. 248.