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BAD FAITH BLOG

Close Counts for Something: Federal District Court in Florida Finds Carrier Did Not Act in Bad Faith in Attempting to Settle Lawsuit Against Its Insured

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Summary: Carrier's diligent attempts to settle after it received a time sensitive policy limit demand demonstrated that it was not acting in bad faith. Plaintiff's counsel refused to discuss the settlement contained in an overly technical and conditional demand letter while the carrier promptly acted (but failed) to achieve a settlement protecting its insured and did not act solely based on its own best interest.

In Cardenas v. Geico Casualty Co., 2011 WL111588 (No. 8:09-CV-2357-T-23, January 13, 2011), the U.S. District Court for the Middle District of Florida held the carrier (Geico) did not act solely in its own interests in attempting to settle a negligence claim against its insured. The case is interesting because the carrier went to great lengths attempting to settle the claim within the policy limits, it failed to obtain a settlement on behalf of its insured. Moreover, there was evidence that the carrier did not meet certain technical conditions imposed by the plaintiff's counsel in his the time sensitive policy limits demand letter. Because the suit did not settle, an excess judgment was entered against the insured in the amount of $970,019, nearly 100 times greater than the per person bodily injury policy limit ($10,000 per person/$20,000 per occurrence).

Among the Geico's alleged transgressions was it failed to timely provide a certified copy of the policy to plaintiff's counsel and failed to unconditionally accept plaintiff's settlement demand. Instead, Geico proposed a release which included a hold harmless agreement which plaintiff's counsel had previously declared would not be accepted. Geico requested plaintiff's counsel provide a proposed release, but plaintiff's counsel was not responsive, so Geico drafted its own release for presentation to plaintiff's counsel

While the Court acknowledged the carrier may have engaged in negligent conduct, it fell short of bad faith. Based on the totality of the circumstances, the Court found Geico did not engage in bad faith because it responded without delay to inform its insured of the risk of liability above the policy limit. Also, Geico promptly responded to plaintiff's timed policy limit demand and used due diligence to comply with each term of the settlement demand. Further, plaintiff's counsel refused to promptly respond to any kind of communication from the carrier, apparently believing that he had the carrier set up for bad faith by his imposition of the multiple conditions. Plaintiff's counsel even refused to reply to requests for feedback regarding preparation of an acceptable release. Despite that conduct (or maybe because of it), Geico was prepared to issue a settlement check without any conditions. Even then plaintiff's counsel refused to reply.

The Court found that the insured, now faced with a judgment 97 times greater than the coverage provided, could not rely on an alleged defect in the carrier's proposed release or on the carrier's inadvertent (but quickly rectified) failure to provide a second, certified copy of the policy. Based upon all these facts, the Court found no reasonable jury could conclude the carrier acted "solely on the basis of its own interest" in attempting to settle the claim and it granted summary judgment in favor of the carrier.

This case demonstrates the importance of insurers communicating with their insureds and continuing to follow up with both the insured and plaintiff's counsel even if the carrier is being ignored. Geico's continued and prompt actions attempting to protect its insured by seeking a full release in exchange for a policy limits settlement is what won this summary judgment. Geico did not do everything perfectly, but its "mistakes" were minor and it rectified those mistakes promptly. This case is also a warning to plaintiff attorneys who think the best approach to the bad faith set up is to make overly technical and unreasonable settlement demands and then fail to respond to the carrier's reasonable actions or use non-compliance with those unimportant, technical requirements to set up future bad faith claim. For the carrier, the best defense is a proactive offense of prompt, consistent and clear communication with the insured and the claimant (or claimant's attorney) in responding to a time sensitive policy limit demand.