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BAD FAITH BLOG

Good Faith Interpleader Filing Protects Infinity in Impossible Settlement Situation

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Summary: Infinity Assurance Insurance Company insured Ben Purscell's car when he was involved in a serious auto accident leading to a serious injury and a death. His liability limits were only $25,000/$50,000. Infinity was unable to settle the underlying case which resulted in verdicts exceeding $900,000. Purscell filed a bad faith failure to settle and breach of fiduciary duty case against Infinity. The district court judge entered summary judgment for Infinity which was affirmed on appeal.

Purscell v. Tico Ins. Co.

Purscell was driving a distraught, drunk, and erratically behaving passenger, Amy Priesendorf when it collided with Tim and Amy Carr's vehicle. Priesendorf was thrown from the car and killed. Tim Carr was seriously injured and Amy Carr was much less seriously injured. Purscell's limits were $25,000 per person and $50,000 per accident.

About three weeks after the accident, the Carrs' attorney demand settlement for the full amount of the policy. When Infinity stated it needed to investigate coverage issues further, the Carrs' attorney withdrew the settlement demand. Thereafter, Priesendorf's parents notified Infinity they wanted to pursue a wrongful death claim against Purscell. Purscell's criminal attorney requested that Infinity settle the Carrs' claim within the policy limits, but after being informed that the parties were negotiating between themselves to determine how to divide the policy limits, that criminal attorney did not follow up any further. The Priesendorfs made a formal settlement offer for the per person policy limits. The Carrs sued and Infinity, unable to resolve the claim and knowing the claimants were unable to negotiate a settlement for the division of the $50,000 amongst themselves, filed an interpleader action. Before filing that interpleader, Infinity wrote to Purscell's criminal attorney and asked her how to resolve the claims without filing the interpleader. Shortly after the trial resulting in awards on behalf of the Carrs for $905,000, the Missouri state court approved the settlement of the Priesendorf wrongful death claim for $7,764.50 in exchange for a full release and apportioned the rest of the policy limits to the Carrs.

Purscell then filed a bad faith and breach of fiduciary duty claim against Infinity. The district court ruled that Infinity had not acted in bad faith for several reasons including its knowledge of the fatality and Purscell's potential liability for the wrongful death claim independent of the claims of the Carrs, Infinity's need to complete its investigation of coverage issues involving Priesendorf's purported intentional conduct, and the lack of the specific deadline by the Carrs regarding when their offer would be withdrawn. The court also concluded that Infinity did not act in bad faith after the Carrs withdrew their "early settlement offer."

The U.S. District Court did not have the benefit of the *Scottsdale Insurance Co. v. Addison Insurance Co*. ruling at the time it entered summary judgment for Infinity. Noting that *Scottsdale* had clarified Missouri's bad faith law the Eighth Circuit noted that Infinity's "focus on settling all three claims" was not evidence of bad faith. In fact, the court disagreed with Purscell's argument that "an insurer's attempt to reach a global settlement of competing claims, without ever denying the responsibility to pay the full policy limits, can serve as evidence that the insurer is placing its own interests over that of its insured." Rather, the court noted that it was in Purscell's interest to try to get all three claims against him settled within the policy limits, which is exactly what Infinity tried to do. Failing that, it filed an interpleader action. Furthermore, the court concluded that Infinity never had a "reasonably opportunity" to settle Tim Carr's individual claim at any time. Importantly, noting that *Scottsdale* had said that an insured's demand to settle a claim is "highly relevant in determining whether an insurer acted in bad faith in refusing to settle," the Eighth Circuit pointed out that Purscell's attorney never demanded that Infinity take such action. Taking all factors into consideration, the Eighth Circuit concluded "no reasonable jury could determine Infinity acted in bad faith by continuing to focus on a global settlement of all three claims." The court also determined that Infinity had not breached its fiduciary duty obligations to Purscell.

This case demonstrates that it is possible for an insurance company to escape bad faith findings when there are exceptionally low limits and high exposure to the insured if the insurer takes all reasonable steps to settle all adverse claims against its insured and, failing that, seeks a judicial apportionment by filing an interpleader action.

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