

# Contract Language Prevented Third-Party Bad Faith Claim

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**Summary:** A judgment was entered against Andrews in excess of its policy limits. Amoco Production, as assignee of Andrews Trucking, brought an action against Gainsco, the insurer, for bad faith failure to settle. Gainsco had been presented an opportunity to settle within policy limits and refused. The trial court granted summary judgment in favor of Amoco finding Gainsco liable for third-party bad faith, but the Wyoming Supreme Court reversed and remanded to enter judgment in favor of Gainsco. The Court held that when a contract provision appeared to limit Andrews' liability to the policy limits, Gainsco had a reasonable basis for rejecting a settlement offer slightly below the policy limit.

Gainsco Insurance v. Amoco Production Company

Amoco Production ("Amoco") entered into a Well and Lease Service Master Contract with Andrews Trucking ("Andrews"). Under the contract, Andrews agreed to indemnify Amoco against liability for injury or death of any Andrews' employee or agent that occurred in the course of Andrews' performance. However, Andrews' liability was limited to the amount of insurance it carried. In accordance with the contract, Andrews procured a \$300,000 general liability insurance policy from Gainsco Insurance Company. Thereafter, one of Andrews' subcontractors was killed on the job. The subcontractor's estate filed a wrongful death action against Amoco, and the parties eventually settled for \$650,000.

After the settlement, Amoco sought indemnity from Andrews. Gainsco defended Andrews in the indemnity action under a reservation of rights. Amoco made an offer to settle within the policy limits for \$297,000, which Gainsco refused. Through separate counsel (not including Gainsco), Andrews settled with Amoco for \$716,490.80. The settlement terms provided that (1) Andrews would confess judgment in the amount of \$716,490.80 plus interest and attorney's fees; (2) Amoco would refrain from executing the judgment against Andrews; (3) Amoco would look solely to Gainsco for recovery; and (4) Andrews would assign to Amoco any bad faith claims it may have against Gainsco. Amoco then brought a declaratory judgment action against Gainsco seeking to hold Gainsco liable for bad faith failure to settle. The district court granted summary judgment in favor of Amoco, which Gainsco appealed.

The Wyoming Supreme Court first addressed whether the tort of bad faith can be prosecuted even though the insured faced no actual damages. Recognizing a tort is not actionable unless there is damage, Gainsco asserted that Andrews suffered no damage and therefore had no claim because Amoco executed a covenant not to execute against Andrews. The Court rejected this argument, holding that the inclusion of a covenant not to execute in a settlement agreement between an insured and a claimant should not negate the fact a judgment has been entered against the insured. The mere existence of that judgment is a sufficient detriment to the insured to constitute tort damages. The Court acknowledged the public policy benefits of this rule because it allows insureds to enter into reasonable settlements and encourages insurers to accept such offers.

The Court also addressed whether the insurer's actions constituted a bad faith failure to settle. Wyoming third-party bad faith law imposes liability on an insurer for an objectively unreasonable rejection of a settlement offer within policy limits that results in an excess judgment against the insured. The reasonableness of a refusal is determined by an objective standard; specifically, whether a prudent insurer would have accepted the settlement offer if it alone were liable for the entire judgment. If the insurer had a bona fide reason for rejecting an offer within policy limits, bad faith has not occurred. A bona fide reason for rejecting a settlement offer may be a reasonable belief the insured will win the lawsuit or that the claimant's recovery will not exceed the policy's limits.

Here, Gainsco had an objectively reasonable belief that Amoco's recovery would not exceed the policy's limits when it rejected the settlement offer within policy limits. The plain, unambiguous language of the indemnity clause in the Amoco/Andrews contract limited Andrews' liability to the amount of insurance coverage procured. Therefore, Gainsco reasonably believed Andrews' liability could not exceed \$300,000, and an offer of \$297,000 could be reasonably rejected. Due to Gainsco's objectively reasonable rejection of a settlement offer within policy limits, the Court reversed and ordered the entry of summary judgment in favor of Gainsco.

**By Anthony L. Martin & Brett Simon**

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