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NEWSLETTER

Failure to Settle Within Policy Limits Not Statutory Bad Faith

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In an unpublished opinion, a Pennsylvania trial court has ruled that an insurer did not commit statutory bad faith by refusing to tender its policy limits for settlement prior to or during trial, despite the rendering of an excess verdict against its insured, where the insurer's actions were guided by informed professional judgments concerning the strength of the insured's defenses, potential exposure and the advisability of preserving prejudicial evidentiary rulings for appeal. *Miller v. Continental Cas. Co.*, 2005 WL 752362 (Pa. Com. Pl. Mar. 23, 2005).

The insurer issued a real estate errors and omissions policy to the company. The plaintiffs sued the company alleging defamation. The insurer appointed trial counsel to represent the company in the defamation action. The insurer declined to tender its policy limits for settlement purposes either before or during trial. A jury rendered a verdict against the company in excess of the insurer's policy limits and the insurer indemnified the company for the entire verdict. The company then sued the appointed trial counsel for malpractice and the insurer for common law and statutory bad faith. A jury returned a verdict in favor of the company on the common law bad faith claim. The statutory bad faith claim was tried to the court.

The court ruled in favor of the insurer, finding that it litigated in good faith on behalf of the company. The court noted initially that the insurer indemnified the company when it refused to settle and "place [d] its own assets, at risk." It then explained that, under Pennsylvania law, the court opined, an insurer is compelled to make "an intelligent and honest appraisal of the case by considering all the factors bearing upon the advisability of settlement. . . . [w]hen an insurer decides to litigate a claim, it is not automatically liable to its insured

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simply because the outcome of the litigation is adverse to the insured. Thus, the insurer does not have an absolute duty to settle a claim just because it is possible that a judgment against the insured may exceed the policy limits."

The court concluded that the insurer satisfied its duty of good faith, despite the excess verdict against the company. The court found that the insurer and appointed trial counsel acted on their reasonable belief, based on available evidence, that the company had the least exposure to liability and that the plaintiff's damages were substantially unprovable or highly speculative. Trial counsel and the insurer kept the company appropriately informed of the progress of the litigation, the court opined, and trial counsel competently represented the company in all proceedings.

The court also noted that trial counsel planned the company's defense and trial strategy based on expert testimony concerning the plaintiff's financial condition. The trial court in the defamation case unexpectedly ruled to allow the unrestricted testimony of the plaintiff's expert, but severely limited the defense expert's testimony. The court concluded that the insurer's position that this decision may have constituted reversible error and should be pursued on appeal post-trial was reasonable and did not constitute bad faith.

For more information, please contact us at 202.719.7130.