HINSHAW

Alerts

Factors Relevant to Resolution of Multiple Claims in Excess of Limits

December 7, 2010
Insurance Coverage Alert

In Vallev. State Farm Mut. Auto. Ins. Co., 2010 WL 3310616 (11th Cir. Fla. 2010), an insurer was confronted with eight claims from an auto accident, including a fatality, with policy limits of only $10,000 per person/$20,000 per accident. About one month after the accident, the insurer invited all interested parties to a settlement conference. After receiving responses from all interested parties except for the decedent's representatives, the insurer offered to pay the policy limits towards a settlement if all parties consented to an allocation between them. The decedent's representative did not make a settlement demand before the conference, and the insurer did not make a specific offer to the decedent's representatives.

At the settlement conference, which was held 2.5 months after the initial invitation, the parties (except for the decedent's representatives) agreed that the insurer should pay the per person limit of $10,000 to the estate, and split the remaining $10,000 among the seven other claimants. During the settlement conference, the decedent's representative learned that the other parties had actually agreed prior to the conference to split the $10,000. The lawyer for the decedent's representative refused to accept the proposed settlement and sued the insurer for delay in failing to settle her claim sooner. She also sued the insured and recovered a $4 million judgment and an assignment of the insured's bad faith claim against the insurer.

The primary argument for bad faith was that, under Florida law, an insurer's delay in settling claims where liability is clear and the damages are in excess of the policy limits constitutes bad faith. *Powell v. Prudential Property & Cas. Ins. Co.,* 584 So. 2d 12, 14 (Fla. Dist. Ct. App. 1991). But the U.S. Court of Appeals for the Eleventh Circuit noted that an insurer will only have committed bad faith if its delay was willful and unreasonable and the carrier knowingly increased the risk of the insured's exposure to excess liability. *Valle v. State Farm Mut. Auto. Ins. Co.,* 2010 WL 3310616 (11th Cir. Fla. 2010). The burden of proof is on the claimant/insured.

Although the insured was exposed to a $4 million judgment, there was no evidence that the insurer knew or should have known that its prompt effort to reach an agreement as to a distribution of the proceeds, and its willingness to pay its entire policy limits, would subject the insured to an excess judgment. Key factors included the absence of a formal demand from the decedent's representative, and the fact that there was no indication that she would refuse the policy limits settlement and make a *post hoc* claim that the offer was untimely.

Practice Note

This case may give comfort to carriers that take prompt and affirmative steps to negotiate a settlement where the claims exceed the limits, but it should be noted that the matter involved unique circumstances. First, the carrier immediately attempted to pay its limits in a settlement to all claimants. Second, the claimant's conduct did not indicate any urgency to settling the matter, and gave no indication that she would sue the insured if she did not immediately get the bulk of the policy limits. In hindsight, where one of many claims is significantly larger than the others, as in this case, it is generally prudent to make the per person limit tender to that claimant sooner than the 3.5 months after the accident.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.