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Alerts

Ninth Circuit Panel Finds Duty to Settle Where No Demand Made

June 18, 2012
Insights for Insurers

A panel of the U.S. Court of Appeals for the Ninth Circuit recently predicted that California courts will obligate insurers "to settle" claims rather than just "accept reasonable demands within policy limits." In *Du v. Allstate Ins. Co*., 2012 WL 2086584 (9th Cir. June 11, 2012), plaintiff (the "Passenger") was one of four persons injured when a vehicle driven by an insured of defendant insurer collided with the automobile that she occupied. Lawyers for the Passenger and her co-passengers (collectively "the passengers") informed the insurer that they would make demands against the policy, which had limits of $100,000 per claimant and $300,000 per accident.

The insurer requested but did not receive any medical damages information for many months. Eventually the Passenger provided evidence of medical expenses that exceeded the per claimant limit, and the Passenger's counsel shortly after made a $300,000 demand on behalf of the passengers. As the damages information did not support that the co-passengers had significant claims, the insurer offered the Passenger the available per claimant $100,000 limit, which her counsel rejected. The underlying matter went to trial and the Passenger secured a verdict in excess of $4 million. The insurer paid its $100,000 policy limits, and the Passenger then took an assignment of the insured's bad faith claim in exchange for a covenant not to execute.

In the bad faith lawsuit, the U.S. District Court for the Central District of California refused to give the jury the Passenger's requested instruction regarding a general duty to settle, rather than the established duty to accept reasonable demands within limits, finding that the insurer had no duty to initiate settlement discussions. On appeal, the Ninth Circuit found that such a duty "to settle" is a reasonable extension of existing California law and that insurers must take affirmative steps to "effectuate a settlement within policy limits after liability has become reasonably clear." The court rejected as *dicta* holdings to the contrary in older state court decisions, and found that California's unfair claims settlement practices statute (Cal. Ins. Code 790.03(h) *et seq*.) supports the rule even though the California Supreme Court has ruled that such statutory violations do not give rise to a separate cause of action. In the end, though, the Ninth Circuit found that the facts did not support giving the Passenger's jury instruction because the insurer had promptly offered the per claimant limits after receiving information supporting the Passenger's damages.

Practice Note

While a California state court need not follow a federal court's prediction of California law, an insurer facing similar facts would also be well advised to engage legitimate claimants early and not take it as given that a bad faith failure to settle claim cannot arise before a demand is made.

Du v. Allstate Ins. Co., 2012 WL 2086584 (9th Cir. June 11, 2012)

For more information, please contact your regular Hinshaw attorney.

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