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Articles

Court does a *Du*-Over in bad faith failure to settle case

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It was fair to say that before and after briefing was completed at the 9th U.S. Circuit Court of Appeals, Du v. Deerbrook was not on anybody's radar screen: the jury had returned a unanimous defense verdict after 28 minutes on three independent grounds, and the panel vacated oral arguments. By all appearances, an unpublished per curiam affirmance was on the way.

When the court's published opinion arrived, the insurance bar was stunned. Although the 9th Circuit affirmed the judgment, it unnecessarily decided two questions of substantive California law (one of which wasn't even briefed by the parties): (1) whether a demand within policy limits is an element of a bad faith failure to settle claim, and (2) whether the "genuine dispute" rule applied to third-party liability cases.

Despite the fact that it had affirmed the judgment, the court - relying in part on a case that had been overruled by Mradi- Shalal (the state Supreme Court case that held there is no ivate right of action for violation of California's fair claim handling regulations) - held that a demand within policy limits was not an element of a bad faith failure to settle claim. Next, notwithstanding the fact neither party argued the issue, the court sua sponte decided that the "genuine dispute" rule does not apply in third-party cases. The portion of the opinion affirming the judgment was practically a footnote. The opinion immediately brought to mind the words of General Pyrrhus: "One more such victory and we shall be ruined."

To read this article in its entirety (subscription required) please visit: http://tinyurl.com/cmv5j5x.

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