

BAD FAITH BLOG

Issues Regarding Good Faith and Reasonableness of Stipulated Judgment Remain

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Summary: Lasorte brought suit against Certain Underwriters at Lloyd's seeking payment on a stipulated judgment agreed to by Lasorte's employer (the insured) after Lloyd's refused to defend the employer. After Lloyd's moved for summary judgment, the United States District Court warned that partial summary judgment in favor of Lasorte was likely regarding Lloyd's liability, but not damages. Even if Lloyd's had breached its duty to defend, Lasorte had to prove that the stipulated judgment was reasonable and entered into with good faith.

Lasorte v. Those Certain Underwriter's at Lloyd's

This dispute arose when Lasorte filed a claim of sexual discrimination and retaliation against her employer (the insured). Her employer had an employment practices insurance policy with a self-insured retention provision (SIR). The employer was self-insured for the first \$25,000 in costs associated with a claim. Lloyd's duty to defend was not triggered until the employer had exhausted the SIR.

The insured employer entered into settlement negotiations with Lasorte and agreed to a stipulated judgment of \$210,000. The employer, however, failed to pay any of its legal fees or any of the judgment costs. As a result, Lloyd's asserted that it had no duty to indemnify, because the employer had not exhausted its SIR by paying the \$25,000. Lasorte, acting as assignee of the insured, brought this suit claiming the insurer had breached its duty to indemnify. Because Lloyd's refused to defend the employer, Lasorte asserted that Lloyd's was estopped from denying coverage and was liable for the entirety of the stipulated judgment agreed to by the parties. Lloyd's moved for summary judgment contending that neither its duties to defend nor indemnify were triggered because the employer had not exhausted the SIR.

The District Court, applying New York law due to a choice-of-law clause in the insurance policy, determined Lloyd's duty to defend and indemnify arose at the moment the employer became legally obligated to pay a loss in excess of \$25,000. At that moment the SIR was exhausted. Therefore, since Lasorte had not moved for summary judgment, the Court warned that Lloyd's was likely liable for employer's costs and loss based on its duty to indemnify. However, the Court stated that there was not enough evidence in the record to determine the reasonableness of the amount of the stipulated judgment.

Whenever a New York insurer refuses to defend, the insured may enter settlement negotiations and settle the case on its own. New York law, however, requires such settlement agreements and stipulated judgments between the insured and third parties to be reasonable and to be made in good faith. Therefore, even if an insurer had breached its duty to defend and improperly refused to pay a claim, the insurer has no duty to indemnify any settlement entered into by the insured in bad faith. Here, Lasorte has the burden of establishing the reasonableness of the stipulated judgment and that it was made in good faith. The evidence in the record was insufficient to establish the reasonableness and good faith of the stipulated judgment thus precluding the entry of complete summary judgment for Lasorte.

By Anthony L. Martin and Cody Hagan

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