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BAD FAITH BLOG

Good Efforts by Insurer Lead to Win

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Summary: Allstate, by making consistent efforts to settle a serious injury case, convinced a jury that it was acting in good faith even though Allstate could have determined earlier that it owed the limits of its policy.

Allstate Ins. Co. v. Herron. 09-35203 9th Cir. 3/10/11

Plaintiff Herrin was involved in a single car accident in which his passenger Trailov was severely injured. Herrin was insured by Allstate. Allstate learned of Herrin's accident 2 days after it happened and so advised Herrin's parents who in turn, advised their attorney along with Trailov's attorney. When Allstate learned of Trailov's attorney, it requested from her a complete description of Trailov's injuries, information about her doctors and ongoing treatment, and access to her medical records and bills. Five months after the accident, Trailov's attorney demanded policy limits of $100,000. There was no deadline for Allstate's response but later in April, Trailov's lawyer said the offer would be revoked on May 16, 2003. Allstate paid Trailov $25,000 to cover a portion of the medical expenses, but on the due date, Allstate faxed a letter to the lawyer indicating it needed two more weeks to finish its investigation. Two weeks later, Allstate faxed an offer of settlement for the policy limit in addition to $12,500 in attorney's fees.

Allstate filed a Declaratory Judgment action against its insured, but its insured confessed judgment for $1.9 million and assigned his rights against Allstate to Trailov and the driver of the car. Allstate amended its Complaint alleging that Herrin had violated the insurance contract by agreeing to the settlement. After denying Motions for Summary Judgment by both plaintiff and defendant, there was a six-day jury trial where the jury answered the following question: "Considering all the facts and the circumstances contained in the evidence submitted to you, did Allstate act reasonably by offering policy limits on May 30, 2003?" The jury answered, yes and Allstate then asked the court to amend the Judgment to find that Herrin breached the insurance contract and the insurance policy's coverage was voided.

The Appellate Court held that even though the parties had stipulated that Allstate could have determined their insured's liability exceeded the limits of its insurance policy by May 16, that does not mean they should have and thus was not inconsistent with the jury's finding that Allstate acted reasonably by offering to settle two weeks after the deadline. The insured also argued Allstate had breached its insurance policy in multiple ways by such things as violating its own procedures, violating Alaska insurance regulations, never advising the insured of the potential excess liability, and not advising the insured of the settlement negotiations. The District Court excluded evidence of each of these claims. The Appellate Court affirmed the exclusion on the basis that only material breaches were relevant and none of these breaches provide evidence as to whether Allstate breached the contract by failing to accept the settlement demand by May 16. Finally, the Appellate Court held the amendment by the judge that the insured's material breach of the cooperation clause represented a breach of the entire policy was not appropriate because the breach required a showing of prejudice and Allstate offered no evidence of prejudice. Furthermore, finding the assignment was null and void was inappropriate because Allstate remained liable under the policy up to the liability policy limits, $100,000. Accordingly, the insured's retained rights against Allstate under the policy could be assigned to the injured passenger and the driver.

This decision by a jury after six days of evidence suggests that jurors will listen to insurers who make a good effort to resolve claims even if they do not do everything perfectly.