

BAD FAITH BLOG

# No Bad Faith by Settling Unconstitutional Strip Search Cases Requiring the Insured to Fund the Settlement

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**Summary:** The County unconstitutionally strip searched multiple arrestees between 1999 and 2002. Recognizing the defenseless nature of the case, Selective Insurance Company of America (Selective) and retained counsel, settled the case, funded the settlement, and then sued the County to recover the multiple deductibles paid. The courts below determined the County owed a deductible paid on its behalf, assessed all defense costs and fees to one plaintiff, and rejected the County's bad faith claim. The highest court in New York affirmed.

*Selective Insurance Company of America v. County of Rensselaer*

The County of Rensselaer engaged in unconstitutional strip searches for several years. Selective retained counsel and defended the cases until it was determined the cases should be settled. Selective and retained defense counsel did not oppose class certification, but rather proceeded with the settlement which it then funded in amounts within the per occurrence deductibles. The County contended there was one occurrence while Selective argued each separate event was an occurrence. The courts below agreed with Selective's interpretation.

The County argued Selective acted in bad faith both when it failed to challenge the class certification and when it settled the class action cases in a way that made the County "liable for all the damages recovered by the class members." The Court disagreed, finding Selective hired competent counsel to defend the County. The Court further noted that in New York in order to "establish a prima facie case of bad faith, the [insured] must establish that the insurer's conduct constituted a 'gross disregard' of the insured's interest—that is, a deliberate or reckless failure to place on equal footing the interests of its insured with its own interests when considering a settlement offer."

The highest court in New York held Selective had not violated that test. Rather, Selective had “discretion to investigate and settle any claim or suit commenced against the County.” Furthermore, the County “failed to meet the high burden of demonstrating that Selective acted in bad faith in negotiating the underlying settlement here.” There was no evidence that Selective grossly disregarded the County’s interests in the way it handled the defense and settlement of the case. Rather, it had hired competent attorneys to defend the case and it had played an active role in negotiation of the settlement. The court found the “County’s bad faith argument lack[ed] merit.”

Selective argued the attorney’s fees totaling over \$440,000 should be allocated pro rata amongst the various plaintiffs. The lower courts disagreed. The New York Court of Appeals agreed all attorneys’ fees should be allocated to one plaintiff because the policy of insurance was ambiguous on that issue.

This case illustrates that New York’s gross disregard standard is difficult to meet. In addition, whenever there are multiple occurrences and a deductible policy is involved in New York, it is not necessarily bad faith conduct to settle the case within the insured’s deductible for each claimant in a class action case.

By Anthony L. Martin

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