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## **It's All for One and One for All -- Until It Isn't**

### **Summary**

While lawyers involved in complex coverage and extra-contractual litigation are interested in what the law is or could be, claims professionals are much more focused. The goal is to timely investigate the three core elements of any liability claim: coverage, liability and damages—and then pay what is owed. Unfortunately, even once these three elements have been established, claimants, and especially claimant attorneys frequently don't cooperate. This presentation addresses one circumstance where a claimant attorney can attempt to prevent settlement in order to create an extra-contractual liability for the insurance company:

Can an insurer in the exercise of good faith deny a policy limit demand against one insured because of the insurer's obligations to another insured? The problem at issue arises when a claimant or claimant attorney demands policy limits to settle a high value claim potentially worth more than limits BUT offers to release only one of multiple insureds. An example would be where the claimant will release only the insured vehicle owner, but not the insured vehicle driver.

### **Only Some States Have Case law:**

- A. California
  1. Straus v. Farmers Insurance Exchange, 31 Cal.Rptr.2d 811 (1994): acceptance of offer that would leave two insureds without coverage would have breached covenant of good faith and fair dealing.
  2. Lehto v. Allstate Insurance Company, 31 Cal.Rptr.2d 814 (1994): insurer's refusal to accept settlement offer which would have released one of two insureds in exchange for full policy limits was not bad faith refusal to settle.
  3. Kansas has followed the California rule: Brummett v. American Standard Ins. Co. of Wisconsin 2005 WL 168310 (U.S. D. Ct. Kansas, 2005).

- B. Texas
  - 1. Travelers Indemnity Company v. Citgo Petroleum Corp., 166 F.3d 761 (2015): An insurer is not subject to liability for proceeding with a reasonable settlement demand even if the settlement eliminates coverage for a coinsured as to whom no demand has been made.
  - 2. Pride Transportation v. Continental Casualty Company, 511 Fed.Appx. 347 (2013): insurer did not breach insurance contract by settling on behalf of driver and not trucking company.
- C. Florida
  - 1. Contreras v. U.S. Sec. Ins. Co., 927 So.2d 16 (2006): insurer can be held liable for bad faith refusal to accept an offer to settle on behalf of owner but not driver. However, insurer had duty to attempt to include driver in settlement, but when plaintiff refused, insurer had a duty to protect the owner.

### **What Should Happen In States Where This Issue Has Not Been Addressed?**

Mendakota insured a vehicle owned by Randall Guy on a personal automobile policy with limits of 25/50. Justin Guy was Randall Guy's son. Kevin Ruskowski was Justin's friend. On the date of loss, Ruskowski was driving the insured vehicle with Justin Guy as a passenger. As a result of the alleged negligence of Ruskowski, Paul Savage was catastrophically injured. Savage's attorneys made a claim against the Mendakota and offered to settle for policy limits, but offered to release only Randall and Justin Guy. Mendakota refused. The case went to trial and there was an eight figure verdict entered against Mendakota's insureds. The Guys then sued Mendakota for bad faith, which matter was removed to Federal District Court. The matter was eventually settled.

According to the pleadings, we also know that Medakota never tendered its limits before the demand. It did not offer its insured's independent counsel. It did not ask Ruskoski or the Guys how they would like to see the demand handled. It did not ask Savage to alter the terms of the demand.

### **Discussion: What Could A Claims Profession Do In This Circumstance?**

It may be possible to analogize this situation to other similar claims handling questions. For instance, the Texas Court in Travelers relied on the opinion in Texas Farmers Insurance Co. v. Soriano, 881 S.W.2d 315 (1994). In that case, the Texas court addressed a situation involving multiple claimants instead of multiple insureds. In both Travelers and Soriano, the court found that a separate settlement exhausting limits could be appropriate.

However, the claims profession may also address universal good faith claims handling standards as well as extra steps that may help avoid extra-contractual liability. These will include communication with the insured, advising the insured of their right to independent counsel, or seeking the insured's input on handling.