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NEWSLETTER

Colorado District Court Holds Reserve and Claims Handling Information Is Discoverable

October 2008

The United States District Court for the District of Colorado, applying federal and Colorado law, has held that insurer reserve and claims handling information was discoverable in post-settlement coverage litigation to resolve a dispute over whether a single or aggregate limit applied to the underlying claims. *Professional Solutions Ins. Co. v. Mohrlang*, 2008 WL 4079290 (D. Colo. Aug. 28, 2008). The court also ruled that information concerning the insurer's corporate structure, which the claimants sought to calculate prejudgment interest on amounts allegedly owed under the policy, was not relevant to the coverage dispute in light of the terms of the settlement agreement.

The insurer had entered into a written settlement agreement with claimants who had sued its insured in the underlying litigation. The settlement agreement specifically left unresolved a disagreement over interpretation of the "related claims" provision in the policy. The claimants took the position that the underlying claims constituted multiple claims under the policy that were subject to the aggregate claims limit, while the insurer argued that the claims were "related claims" and subject to the coverage limit for a single claim. The settlement agreement indicated that the parties would pursue quasi-judicial or judicial resolution of this dispute.

In the coverage action to resolve the applicable limit, the claimants requested discovery concerning: 1) the insurer's corporate structure; 2) the insurer's reserve information; and 3) the insurer's claims handling. The insurer objected to these requests and sought a protective order.

The court first found that discovery regarding the insurer's corporate structure, including its pre-tax return on equity, was not relevant to the coverage dispute. The claimants argued that their requests were relevant to the issue of prejudgment interest. However, the court found that the settlement agreement did not include prejudgment interest and that the information sought "*may* be relevant only if the Court eventually holds that [the claimants] made unrelated claims under the policy, because only then could it be argued that [the insurer] '*wrongfully* withheld' money." Since such a determination had not been made, the court concluded it was premature to hold such information relevant. The court further found that, under Colorado law, "[a]ccepting a settlement payment without reservation for prejudgment interest extinguishes the creditor's right to prejudgment interest against the insurer." Accordingly, the court granted the insurer's motion for a protective

order as to the discovery requests concerning its corporate structure.

Next, the court ruled that information concerning the insurer's reserves for the underlying claims was discoverable. It reasoned that neither the Tenth Circuit nor the Colorado Supreme Court had held that reserve information is never relevant. The court also noted that the claimants had made specific allegations as to the relevance of the information sought—the claimants had argued that "the existence of two separate reserves would indicate that [the insurer] interpreted [the claimants'] claims as distinct claims with separate coverage limits." Concluding that, under Colorado law, a court "may rely on evidence of the parties' post-contractual conduct to determine [the contract's] meaning," the court denied the insurer's motion for a protective order as to reserve information.

The court also denied the insurer's motion for a protective order as to discovery requests concerning how it had made coverage decisions regarding the claims. The court found that the information sought was relevant to its determination of how the insurance policy should be interpreted. It reasoned that "[e]vidence of the parties' conduct in interpreting or applying the terms of the policy is relevant to the issue before the Court." The court rejected the insurer's argument that the information was protected work product because it did not rebut the claimants' contention that, under Colorado law, "the work product doctrine . . . does not apply to an insurer's activities in the ordinary course of adjusting claims."