

# Allegations of Quick Denial and cursory Investigation Raise Triable Issues as to Bad Faith Claim

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The United States District Court for the Eastern District of California has held that a professional liability insurer's actions in denying coverage for a claim two days after it was tendered and in maintaining its position despite repeated requests by the insured for a more thorough investigation raised genuine issues of material fact as to whether the insurer acted in bad faith, precluding the insurer's motion for partial summary judgment. *Harbison v. Am. Motorists Ins. Co.*, 2009 WL 1808615 (E.D. Cal. June 24, 2009).

The insured attorney was asked by another attorney to associate as trial counsel in a personal injury action. The client in that action subsequently terminated the first attorney as her counsel and retained the insured to represent her exclusively. The ousted attorney then filed a "lien" on the personal injury action, claiming entitlement to a portion of any fees generated from a settlement or judgment. After settlement, the first attorney filed suit against the insured, which he tendered to his malpractice carrier. The carrier denied coverage via email on May 8, 2003, two days after receiving the tender. The denial was based solely on an exclusion for claims arising out of an intentionally wrongful, fraudulent or malicious act or omission. The insured contested the denial, and the insurer's coverage counsel thereafter requested copies of certain correspondence between the insured and the first attorney. The insured, in response, stressed that the entire case file should be examined and suggested a meeting with insurer representatives or coverage counsel to discuss the case. Without agreeing to either suggestion, the insurer confirmed its prior position. The insured again contested the denial, explained why he felt the insurer's coverage analysis was incorrect and asked the insurer to reconsider its position. In a subsequent letter, coverage counsel suggested that the insured review the case file himself and submit any documents that he believed warranted reconsideration. On September 9, 2003, the insured wrote back, asserting that the insurer failed to give proper consideration to its duty to defend. The first attorney meanwhile filed a second amended complaint, which the insured forwarded to the insurer on March 30, 2004. On July 23, 2004, the insurer issued another denial, this time listing six grounds for its stated position.

In the coverage litigation that followed, the court initially granted the insurer's motion for summary judgment, holding that there was no potential for coverage and, thus, no duty to defend. That ruling, however, was

subsequently reversed on appeal. On remand, the insurer moved for partial summary judgment as to the insured's bad faith and punitive damages claims, in which the insured alleged that the insurer denied coverage without a reasonable investigation.

Ruling on the insured's motion, the court first addressed the potential applicability of the genuine dispute doctrine, under which an insurer will not be held liable in bad faith where it denies or delays payment of policy benefits based on a genuine dispute as to the existence of the insurer's liability for, or the amount of, an insured's claim. Despite *dicta* in one California decision suggesting that the doctrine might apply in third-party, duty-to-defend cases, the court instead found that it "appears wholly incompatible" with such cases. Under this reasoning, the existence of a genuine dispute as to the insurer's coverage obligations indicates at least a potential for coverage, and that is all that is needed to trigger a duty to defend, the court held. Even if the doctrine could apply, according to the court, the insurer would not be entitled to summary judgment because a triable issue of fact existed as to whether the insurer's denial was made reasonably and in good faith.

The court also found triable issues of fact as to whether the insurer conducted an adequate investigation of the insured's claim before denying coverage. In making this finding, the court pointed to the insured's allegations that the insurer failed to conduct any type of investigation before denying coverage just two days after tendering the suit, and that, following that initial denial, the insurer failed sincerely to investigate the claim by, *inter alia*, repeatedly refusing to meet with the insured and review the entire case file; limiting its investigation to reviewing purportedly irrelevant correspondence between the insured and the underlying plaintiff; and, in response to the insured's protestations, merely asking the insured to submit documents in support of his request for coverage. The court further noted that the insurer, on the other hand, claimed it had carefully reviewed the complaint, attached exhibits and policy before issuing its denial and that it had enough information about the nature of the claim (a fee dispute among attorneys) to determine that no further investigation was needed.

Finally, the court rejected the notion that its prior summary judgment ruling of no coverage, which was reversed on appeal, provided a defense to the bad faith claim. The court noted that the case law relied on by the insurer for the proposition that a prior favorable ruling is probative of the reasonableness of a coverage position was inapposite because the ruling in that case law was made in the face of conflicting precedent.