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NEWSLETTER

No Bad Faith for Settling Claim Against Insured

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Applying Oregon law, the United States District Court for the District of Oregon has held that an insurer cannot be held liable for settling a claim in accordance with the express provisions of the policy. *Parvin v. CNA Fin. Corp.*, 2013 WL 5530618 (D. Or. Oct. 4, 2013).

A physician's medical malpractice liability policy contained an endorsement that stated: "We will . . . [n]ot settle any claim without your consent, or the consent of the Association's Committee formed to this purpose." In a malpractice action filed against the physician, the insurer requested consent to settle shortly before trial. The physician refused but the appropriate committee said the insurer had consent to settle as soon as the physician testified at trial. Thus, after the physician concluded his testimony, the insurer settled the action for an amount within the policy limits. The physician subsequently filed suit against the insurer, alleging that settling without his consent was a breach of the policy and of the duty of good faith, which had resulted in harm to his reputation and loss to his medical practice.

The court granted summary judgment for the insurer, finding that the policy expressly permitted the insurer to settle with the consent of either the physician or the committee, and the committee had provided consent. The court opined that the physician's argument essentially ignored the policy language permitting the insurer to settle with the committee's consent. The court rejected the physician's attempt to rely on Oregon cases holding that an insurer could be found in bad faith for failing to settle, finding that Oregon courts have never held that an insurer is liable for bad faith for exercising its contractual right to settle a claim.