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NEWSLETTER

California Court of Appeal Holds That There Can Be No Bad Faith Failure to Settle Where Claimant Has Not Made a Settlement Demand or Shown Interest in Settlement

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The California Court of Appeal, applying California law, has held that an insurer is not liable for bad faith failure to settle if no settlement demand had been made by the claimant and the claimant had not expressed an interest settlement, even if the insured's liability is clear and the possibility of an excess judgment exists. *Reid v. Mercury Ins. Co.*, 2013 WL 5517979 (Cal. Ct. App. Oct. 7, 2013).

The insured was involved in an automobile accident that resulted in serious injuries to another driver. Shortly after the accident, the insurer advised the injured party that it "was accepting liability and that there may be a 'limits issue.'" The insurer then requested an interview with the injured party and asked for her medical records, which were not made available. Although the insurer and attorney for the injured party subsequently exchanged correspondence, the injured party never made a settlement demand. The injured party then filed suit against the insured about three months after the collision, and the injured party provided the insurer with her medical records about seven months after the accident. The insurer eventually offered the injured party the policy limits of $100,000, but she rejected the offer. The injured party proceeded to trial, obtaining a judgment against the insured for approximately $5.9 million. Because the insured had declared bankruptcy during the lawsuit, the bankruptcy trustee assigned to the injured party any potential rights the insured had against the insurer. The injured party then sued the insurer for bad faith failure to settle, and the trial court granted summary judgment in favor of the insurer.

On appeal, the California intermediate appellate court affirmed the trial court's ruling, explaining that for bad faith liability to attach to an insurer's failure to settle, "there must be, at a minimum, some evidence either that the injured party has communicated to the insurer an interest in settlement, or some other circumstance demonstrating the insurer knew that settlement within policy limits could feasibly be negotiated." In the absence of such evidence, the court reasoned, "there is no 'opportunity to settle' that an insurer may be taxed with ignoring." Because there was no settlement offer from the injured party, and no evidence from which any reasonable juror could infer that the insurer knew or should have known that she was interested in settlement, the court held that the insurer had no duty to initiate settlement negotiations or offer its policy limits. In so

holding, the court noted that an "opportunity to settle" does not arise simply because there is a significant risk of an excess judgment.