



Policy Limit Settlement Exposes Insurer to Bad Faith Claim

From the desk of Ashley Nagrodski: Insurance policies are commonly structured to limit the insurer's duty to defend up to the point when policy limits are exhausted. But when there are multiple claimants and the insurer settles the largest claim for policy limits, can the insurer be subject to bad faith for refusing to defend from subsequent claimants because the policy is exhausted? Read on to find out.

Claims Pointer: In this case, arising out of a 16-vehicle traffic accident and ultimately resulting in more than one claim, the insurer declined to arrange a settlement where the insured would contribute \$1,000 towards a \$1 million settlement to avoid exhausting policy limits. The insured alleged bad faith after the insurer refused to defend subsequent claims on the basis that policy limits had been exhausted. The Washington Court of Appeals held that the insurer was subject to bad faith by placing its own interests above the insured's interests when the insurer settled the largest claim for policy limits and then denied a defense for subsequent claims. This case serves as a reminder of the importance of carefully structuring and negotiating settlement agreements involving more than one claim when policy limits are at play. Settlement negotiations should involve consideration of whether there could be future, subsequent claims before the policy limit is exhausted.

[AP Transport v. Zurich Am. Ins. Co., No. 76479-9-1, Washington Court of Appeals Div. I \(August 13, 2018\) \(unpublished\).](#)

On July 20, 2011, Joginder Singh dba AP Transport's ("Plaintiff") employee caused a 16-vehicle traffic accident while operating Plaintiff's semi-truck. The employee approached traffic at full speed and, at the last moment, swerved onto the adjacent lane, colliding with a logging truck. The impact caused both trucks, their trailers, and cargo to strike other vehicles, including a truck driven by Bryan Sykes ("Sykes") and a vehicle occupied by nine-year-old Nancy Beckwith ("Beckwith"), who died as a result of the accident. Beckwith's family filed a wrongful death suit against Plaintiff.

Plaintiff had a \$1 million policy from Zurich American Insurance Company ("Zurich"). Zurich retained attorney Ken Roessler ("Roessler") to defend Plaintiff. Roessler received notice that Sykes would be making a claim. Farmers Insurance Company ("Farmers")

filed a \$25,150.32 subrogation suit. In order to settle Beckwith's claim, Roessler asked Zurich to allow Plaintiff to personally contribute \$1,000 toward the \$1 million settlement offer, so that Zurich would continue to provide Plaintiff with a defense for subsequent claims. Zurich declined the arrangement and instructed Roessler to tender the \$1 million policy to Beckwith. Beckwith accepted the settlement.

Shortly before the statute of limitations expired, Sykes sued Plaintiff. Plaintiff tendered the claim to Zurich and Zurich claimed it had no further duty to defend because policy limits had been exhausted. Plaintiff retained private counsel and ultimately settled with Sykes for \$250,000. Farmer's withdrew its subrogation suit. Plaintiff sued Zurich for numerous claims including bad faith. At trial, the jury found that Zurich failed to act in good faith. The trial court entered an award of \$291,000 on the verdict and awarded Plaintiff \$293,710.23 in attorney fees and costs. Zurich appealed.



Ashley Nagrodski

anagrodski@smithfreed.com

Phone: 206.576.7575

Fax: 206.576.7580

www.smithfreed.com

Washington Office

1215 4th Ave, Suite 900

Seattle, WA98161



Washington Case Update



Zurich took the position that the policy allowed it to settle any claim it deemed appropriate and provided an unambiguous contractual right to terminate defense after policy limits were exhausted. Zurich argued that upholding the bad faith claim would expand its obligations beyond what was required under the policy. Plaintiff argued that Zurich favored its own interest above his interests when it settled with Beckwith so that it “could refuse to defend him from other claimants and save on the costs of defense.” According to Plaintiff, Zurich’s actions “unfairly left him exposed to substantial defense costs when Sykes sued him.”

The Washington Court of Appeals noted that while a policy may provide insurers with the right of control over settlement decisions, such discretion is not without limits. The court explained that an insurer “cannot put its financial interest before the interest of its insured; for an insurer to do so is to act in bad faith.” (emphasis added). An insurer “must give equal consideration” to the interests of its insured. (emphasis added). The Washington Court of Appeals explained that the duty of good faith is based on both “the contract and the fiduciary relationship,” and accordingly, Zurich could not justify its action based on the contract (insurance policy) alone. Even where the contract unambiguously permits an insurer’s actions, there could still be “a valid concern that the insurer has attempted to circumvent its duty to defend by making an early escape from the litigation.”

As to Plaintiff’s case, the court noted that at trial, Plaintiff’s expert testified that Zurich should have explored the idea of a “holdback” when negotiating Beckwith’s settlement. The expert opined that Zurich rejected having Plaintiff contribute \$1,000 to the settlement in order to “avoid having to create a reserve for defense costs for non-Beckwith claims.” The expert also testified that Zurich failed to adequately investigate other claims before settlement and exhausting policy limits, especially the value of Sykes’ claim in comparison to Beckwith’s claim. Finally, the expert opined it was reasonable to anticipate that Beckwith may have settled for below policy limits, as Beckwith would be aware of other potential claimants, and in fact settled below policy limits with the other driver. Based on the evidence from the trial court, the Washington Court of Appeals determined that the jury’s finding of bad faith was justified and upheld the trial court’s ruling.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/764799.pdf>



Ashley Nagrodski

anagrodski@smithfreed.com

Phone: 206.576.7575

Fax: 206.576.7580

www.smithfreed.com

Washington Office

1215 4th Ave, Suite 900
Seattle, WA 98161

