



Claims Denial Not Always A Black And White Issue

RULING SPELLS OUT RIGHTS OF INSURED PARTIES WHEN INSURER JUST SAYS NO

By GREGORY A. ALLEN

Any case becomes more complex when the defendant becomes uninsured as a result of their insurance carrier denying coverage and refusing to defend the case. Settlement becomes impossible, and any ultimate recovery turns into pure speculation.

This scenario becomes even more complicated when the denial is improper. Although the counsel and parties are placed in a difficult situation, there are options open to the parties that allow them to resolve this underlying claim and place the plaintiff in a position to directly pursue payment from the carrier that improperly denied coverage.

This very issue was presented to the Connecticut Supreme Court in the case of *Black v. Goodwin, Loomis and Britton Inc.*, 239 Conn 144 (1996). In *Black*, the carrier insuring the underlying defendant (White) denied coverage and refused to defend the case based on non-payment of the premium. However, the carrier conceded during the appeal that White was, in fact, entitled to coverage for the incident. Consequently, the threshold issue of whether coverage was improperly denied was deemed proven. The only issue the court had to decide was whether the settlement agreement entered into between Black and White was enforceable against White's insurance carrier, Maryland Casualty.

A settlement had been reached between Black and White, which became a stipulated judgment, for \$500,000. It was stipulated that the settlement could only be enforced and collected against Maryland Casualty. The final pertinent part of the settlement agreement

included an assignment of White's rights to sue Maryland Casualty for improperly denying coverage to Black.

Black filed suit against Maryland Casualty and the agent who issued the policy (Goodwin) in New London Superior Court. The case was tried to a jury and judgment entered for Black in the amount of \$1,009,833, including interest pursuant to Connecticut General Statutes §37-3a and CGS §52-192a. The Supreme Court affirmed the judgment of the trial court.

In reaching its decision in *Black*, the Supreme Court decided to join the majority of states, holding that "when an insurer has refused to defend its insured, it is in no position to argue that the steps the insured took to protect himself should inure to the insurer's benefit.... [W]hen an insurer breaches its contractual duty to defend and, as a result, improperly leaves its insured to fend for itself, the insurer will not be heard to complain when the insured enters into a settlement agreement so long as the insured acts in good faith and without fraud."

Possible Collusion?

A significant issue considered by the court was whether the agreement was entered into



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fairly or through collusion between the plaintiff and insured. While the court required the plaintiff to prove that the settlement was reasonable, it rejected Maryland's argument that the plaintiff be required to prove that the settlement agreement was not entered into through collusion and fraud.

Instead, the court held the appropriate protection would be to allow "the insurer to contest the stipulated judgment on the ground that it was improperly obtained. Our system of justice is adequately equipped to discern the existence of fraud and collusion." However, the carrier had to prove that the agreement was entered into through fraud or collusion by clear and convincing evidence rather than the lower preponderance of the evidence burden of proof.

A plaintiff must prove that the denial was improper and that the settlement reached by the parties in the underlying action was reasonable. The court in *Black* did not have to concern itself with the issue of improper denial as Maryland conceded the point. However, a plaintiff will want to carefully review the facts of their case and the exact wording of the insurance contract in question before entering into a settlement agreement similar to *Black*.

The improper denial of the defense of the claim is the initial threshold which must be satisfied prior to the court considering enforcing the agreement against the carrier.

Gregory Allen is the managing partner at Trendowski & Allen in Centerbrook, where his litigation practice concentrates on personal injury, liquor liability, family law, probate, and real estate.

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Once this threshold is satisfied, the plaintiff must then prove to the court that the agreement reached and the stipulated judgment entered was reasonable. This inquiry must take into account all the facts of the case known to the insured at the time the settlement was reached.

The plaintiff “need not establish actual liability to the party with whom it has settled so long as a potential liability on the facts known to the insured is shown to exist, culminating in a settlement in an amount reasonable in view of the size of possible recovery and degree of probability of a claimant’s success against the insured.”

In *Black*, the parties entered into a stipu-

lated judgment which was ultimately enforced against Maryland in excess of its contractual policy limit. The plaintiff called two civil litigation experts who testified that the agreed-upon amount was reasonable given the facts of the case. While the court enforced the stipulated judgment in *Black*, a plaintiff will likely have an easier job of proving the reasonableness of the settlement amount if a competent independent third party places a value on the case.

“Competent independent third parties” necessarily include Superior Court judges. This will not only provide the plaintiff with evidence of the reasonableness of the figure, but will also greatly reduce the chances

of the carrier successfully proving that the amount was reached through collusion.

If the groundwork and stipulated judgment are properly executed, the ultimate result is a benefit both to the plaintiff and the insured. From the insured’s perspective, they are freed from liability with minimal legal cost. From the plaintiff’s perspective, factual liability is no longer an issue, and both jury selection and trial are reduced to arguing a declaratory judgment action. As a side note, a finding of an improper denial makes the carrier liable regardless of policy limits. In the *Black* case, the insurer was liable for \$1,009,833 even though the policy limit was \$500,000. ■