

Eleventh Circuit Rules That Underlying Settlement Reached In Bad Faith Is Not Enforceable Against Insurer

12.21.16



(Article from *Insurance Law Alert*, December 2016)

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Affirming a Florida district court decision, the Eleventh Circuit ruled that an underlying settlement was negotiated in bad faith and that an insurer is not obligated to provide indemnity for settlement payments. *Sidman v. Travelers Casualty and Surety*, 841 F.3d 1197 (11th Cir. 2016).

Culbreath, a property owner association, sued Kirkwood, a homeowner, seeking to enforce restrictive covenants relating to property care and appearance. Kirkwood counterclaimed for slander. Travelers agreed to defend Culbreath with respect to the counterclaim. When Kirkwood prevailed and sought attorneys' fees, Travelers refused to defend the attorneys' fee claim. That refusal to defend was held to be wrongful by the Eleventh Circuit.

Culbreath and Kirkwood reached a settlement under which Culbreath paid \$295,000 on the attorneys' fee claim (more than three times the actual amount of Kirkwood's fees), and assigned Kirkwood the proceeds from any action against Travelers, in exchange for Kirkwood's agreement not to execute judgment against Culbreath. Kirkwood and Culbreath also executed a promissory note that was not disclosed to the court or Travelers. The note provided that if Kirkwood was not successful in obtaining \$50,000 or more against Travelers, then Culbreath would pay Kirkwood \$50,000. (If Kirkwood recovered an amount less than \$50,000, then Culbreath would pay the difference up to \$50,000). In ensuing litigation, Travelers argued that the underlying settlement was the product of collusion. A Florida district court agreed, ruling that the settlement was neither reasonable nor negotiated in good faith and thus was unenforceable against Travelers. The Eleventh Circuit affirmed.

Under Florida law, an insurer that wrongfully refuses to defend is generally bound by a settlement, so long as it did not result from fraud or collusion. In determining whether there is fraud or collusion, Florida courts look to "evidence of an unreasonable settlement amount and of bad faith on the part of the negotiating parties." Finding both bad faith and unreasonableness here, the court noted that Culbreath "was willing to agree to any fee," so long as the judgment would be enforced only against Travelers. The court held that this fact, together with the undisclosed side arrangement that limited Culbreath's exposure to \$50,000, established bad faith. Bad faith was also evidenced by Culbreath's similar settlement with another homeowner.

The court rejected the argument that the settlement could not be deemed collusive as a matter of law because Kirkwood and Culbreath did not share the settlement proceeds. The court explained that while shared settlement proceeds may establish collusion, it is not required. The court also rejected the argument that Travelers was bound by the settlement because it failed to object to it, stating that “the practical effect of such a rule would be that once an insurer is given prior notice of and fails to object to a settlement agreement . . . it will be deemed to have waived all objections despite underlying fraud or collusion of which it had no knowledge. There is no such rule in Florida law.”

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