

Insurer Has No Duty To Settle For All Insureds

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Addressing a matter of first impression, a New Jersey court ruled that an insurer may settle claims for one insured without reaching a settlement for additional insureds, so long as the settlement was made in good faith. *Nat'l Surety Corp. v. First Specialty Ins. Corp.*, 2016 WL 7057503 (N.J. Superior Ct. Nov. 18, 2016).

The coverage dispute arose out of a murder at a shopping mall. The deceased's family sued the mall and a security company, among others. First Specialty, which provided primary additional insured coverage to the mall and the security company, agreed to defend the suit. After attempts to reach a global settlement failed, First Specialty reached an agreement with the underlying plaintiff and the security company's excess insurer. Under the agreement, First Specialty would pay its \$2 million policy limit to settle the claims against the security company. The settlement did not resolve the claims against the mall defendants. National Security, the mall's excess insurer, filed suit to prevent First Specialty from finalizing the settlement. National Security argued that First Specialty was obligated to allocate its policy limits equally among additional insureds in any settlement. National Security further argued that even if First Specialty could exhaust its policy limits by settling the claims on behalf of the security company, it was nonetheless required to continue defending the mall in the underlying action. The court rejected both arguments.

First Specialty's policy states that "We (FSIC) may, at our discretion, investigate any 'occurrence' and settle any claim or 'suit' that may result." The court ruled that this language unambiguously gives the insurer the discretion to exhaust its limits to settle on behalf of any insured defendant, so long as the settlement is made in good faith. The court further explained that First Specialty had engaged in extensive good faith negotiations, and that the mall defendants had a substantial amount of coverage and defense costs available under their own primary and excess policies. Finally, the court held that First Specialty no longer had a duty to defend once its policy limit was exhausted because the policy expressly stated that defense obligations terminate upon exhaustion of limits by payment of judgment or settlement.

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