

Massachusetts Appellate Court Affirms Insurer's Right To Settle Without Policyholder's Consent

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A Massachusetts appellate court ruled that a policyholder could not establish negligence or breach of contract based on her insurer's settlement of the underlying suit for an amount within policy limits. *Johnson v. Proselect Ins. Co.*, 92 Mass. App. Ct. 1118 (Dec. 12, 2017).

A medical malpractice suit resulted in a \$5 million judgment against the physician. Proselect, the physician's professional liability insurer, opted to forgo post-trial motions or an appeal, and instead settled the case (over the physician's objection) for \$3.75 million – an amount within the policy's \$4 million limit. The physician sued Proselect, alleging negligence and breach of contract based on Proselect's post-verdict conduct. A Massachusetts trial court granted Proselect's summary judgment motion on those claims, and the appellate court affirmed.

On appeal, the physician argued that although the settlement released her from all liability, it harmed her "professional reputation, her future career prospects, and caused her emotional distress." She further asserted that notwithstanding the policy provision authorizing Proselect to settle a post-verdict claim without her consent, Proselect did not have an absolute right to settle where pursuit of post-trial motions would have best served her interests. The appellate court rejected these arguments. The court explained that under New Hampshire law, negligence based on an insurer's duty of reasonable care in defending an insured can only be established if the insurer's misconduct exposes its insured to personal liability. Additionally, the court held that there could be no breach of contract (including the implied duty of good faith and fair dealing) because the policy expressly gave Proselect the right to reach a post-verdict settlement without the physician's consent.

Authors and Contacts

[Bryce Friedman](#)

Partner

bfriedman@stblaw.com

+1-212-455-2235

