

Second Circuit Dismisses Policyholder's Breach Of Contract Claims Against Insurer Based On Insurer's Settlement

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The Second Circuit affirmed a decision dismissing breach of contract and bad faith claims against an insurer, finding that the insurer's decision to settle claims asserted against it did not violate any contractual duties that the insurer owed to its policyholder. *Keller Foundations, LLC v. Zurich American Ins. Co.*, 2018 WL 6431537 (2d Cir. Dec. 6, 2018).

Zurich insured Keller Foundations under a general liability policy. Diaz, a general contractor, sued Zurich, arguing that it was an additional insured under the policy. The parties settled that suit with a payment of \$450,000 from Zurich to Diaz. Thereafter, Zurich obtained reimbursement for the settlement from Capital Insurance pursuant to a reinsurance agreement. After Capital paid Zurich, Capital then sought reimbursement from Keller because Capital is owned and fully funded by Keller.

After Keller reimbursed Capital, Keller sued Zurich alleging breach of contract and the duty of good faith and fair dealing. Keller argued that Zurich breached its duties under the liability policy by settling the suit with Diaz and then seeking reimbursement from Capital. Keller argued that Zurich had a duty not to "use Policy funds to defend and settle a claim that sought to impose liability on Zurich itself." A New York district court rejected this argument and granted Zurich's motion to dismiss. The Second Circuit affirmed.

The Second Circuit held that Keller failed to allege breach of contract because the insurance policy did not bar Zurich from settling claims against it, and even assuming it did, Keller failed to allege any damages flowing from that settlement. The court rejected Keller's assertion that it was damaged because it was obligated to reimburse Capital for a portion of the settlement and to pay a deductible under the reinsurance agreement.

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