

Seventh Circuit Rejects Umbrella Insurer's Contract And Tort Claims Against Policyholder, Finding No Breach Of Settlement Duty (Insurance Law Alert)

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The Seventh Circuit affirmed the dismissal of an umbrella insurer's suit against its policyholder, ruling that the policyholder did not breach any contractual or extra-contractual duty to settle the underlying suit. *N. Am. Elite Ins. Co. v. Menard, Inc.*, 43 F.4th 691 (7th Cir. Aug. 4, 2022).

An injured customer brought suit against Menard, a home improvement store. Menard was insured under a \$1 million policy issued by Greenwich, which sat above a \$2 million self-insured retention. The Greenwich policy covered up to \$1 million of liability. Liability exceeding \$3 million implicated an umbrella policy issued by North American. In the underlying suit, the claimant offered to settle for \$1.98 million. Menard did not respond to the offer, despite North American's encouragement to accept. Prior to the verdict, Menard entered into a high-low settlement that capped its obligations at \$6 million. The jury ultimately returned a verdict of \$13 million, which was reduced to \$6 million under the agreement. North American indemnified Menard for its liability in excess of \$3 million and then sued Menard, seeking reimbursement. An Illinois district court dismissed the suit and the Seventh Circuit affirmed.

The Seventh Circuit rejected North American's contention that the self-insured retention made Menard an insurer, subject to certain responsibilities to settle. The court noted the absence of legal support for such a position and reasoned that a self-insured retention is more akin to a deductible than a form of "insurance." In addition, the court ruled that Menard did not violate any contractual duty to North American by failing to accept the initial settlement offer. The court emphasized the differing language in the Greenwich primary policy as compared to the North American umbrella policy, noting that the former contained broad contractual obligations to exercise "utmost good faith" in settling, whereas the latter included less expansive language relating to cooperation. The court concluded that North American's claims failed as a matter of law because they did not allege failure to cooperate, but rather a violation of Menard's good faith duties under the Greenwich policy—duties that were owed only to Greenwich. The court rejected North American's assertion that the duty of good faith implied in all Illinois contracts required Menard to give it the same consideration that it had promised to Greenwich.

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