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VERDICTS & SETTLEMENTS

Bad faith case settles for \$7 million

Insured claimed company refused to settle wrongful death case



Tim Dollar

\$7 million settlement

The owner of a window washing company settled a Jackson County bad faith lawsuit against his liability insurance carrier for \$7 million. He claimed he was exposed to an excess judgment when the insurer refused to settle an underlying wrongful death case.

"The startling thing in the case is that the carrier had \$1 million limits of liability and ended up paying \$7 million," said Tim Dollar of Kansas City, who represented the window washing company in both the wrongful death case and the bad faith case.

John Doe, owner and operator of ABC Window Cleaning, Inc., hired Joe Smith as a temporary window washer in July 2000. After less than an hour on the job, Smith fell eight stories to his death.

Smith's widow and minor children filed a wrongful death lawsuit against Doe and the window cleaning company in July 2002, alleging that Doe committed various acts and omissions that resulted in Smith's death.

Doe tendered his defense to his liability insurer, XYZ Insurance Co. XYZ refused to provide coverage to Doe, contending that its policy excluded coverage

for "workers' compensation and similar laws." XYZ also maintained that the deceased was an "employee," thereby excluding him under the policy terms.

Doe's workers' compensation/employers' liability carrier assumed the defense and filed a motion for dismissal or summary judgment, citing an immunity defense from liability under the workers' compensation law. The court, however, ruled that the plaintiffs had met the threshold requirement of charging "something more," giving the circuit court subject matter jurisdiction over plaintiffs' claims against Doe.

Thereafter, Doe released the workers' compensation carrier of its obligation to defend in exchange for the waiver of any subrogation interest in the third-party claim.

The Smiths offered Doe a \$1 million settlement of their wrongful death claim. Doe communicated the settlement offer to XYZ, but the company refused the offer.

The case proceeded to trial, where a judge ruled that Doe was negligent by creating "something more than general workplace dangers" and that the state workers' compensation law shielding employers from such lawsuits did not apply. The judge awarded \$7.25 million to the Smith family, but XYZ failed or refused to

pay any portion of the judgment.

Thereafter, Doe filed a bad faith lawsuit against XYZ, alleging that the company breached the coverage it promised under the policy by failing to defend or settle the wrongful death claim. Doe further alleged that XYZ made no investigation and gave no consideration to easily ascertainable facts that dictated coverage under its policy.

In addition, Doe maintained that the decision not to defend or settle the wrongful death claim was based solely on the interests of XYZ, without consideration of Doe's interest or the clear obligations of the policy. Doe contended that XYZ's bad faith practices entitled him to punitive damages.

With consent from the Smith family, Doe settled the bad faith lawsuit for \$7 million. After attorney's fees and expenses, Doe then negotiated a settlement with the Smith family and obtained a release of the underlying judgment.

Leland Dempsey of Kansas City represented the Smith family in the wrongful death case and joined the bad faith case with an equitable garnishment proceeding under the original policy. He declined to comment on the settlement, citing a confidentiality agreement among the parties.

— Anne Vitale

Facts of the Case

Type of Action: Bad faith insurance practices

Type of Injuries: Exposure to excess judgment

Court/Case Number/Date: Jackson County Circuit Court/Confidential/Sept. 25, 2006

Caption: Confidential

Judge, Jury or ADR: Mediation

Name of Judge: Not disclosed

Verdict or Settlement: \$7 million settlement

Special Damages: \$7.25 million judgment

in underlying case

Allocation of Fault: N/A

Last Offer: N/A

Last Demand: N/A

Attorney for Plaintiff: Tim Dollar of Dollar, Burns & Becker, Kansas City

Insurance Carrier: Not disclosed

Plaintiff's Experts: Rich McLeod, Kansas City (insurance practices and coverage)

Defendant's Experts: None