POLICY LIMITS DEMANDS AND TIME LIMIT DEMANDS DUTY TO SETTLE

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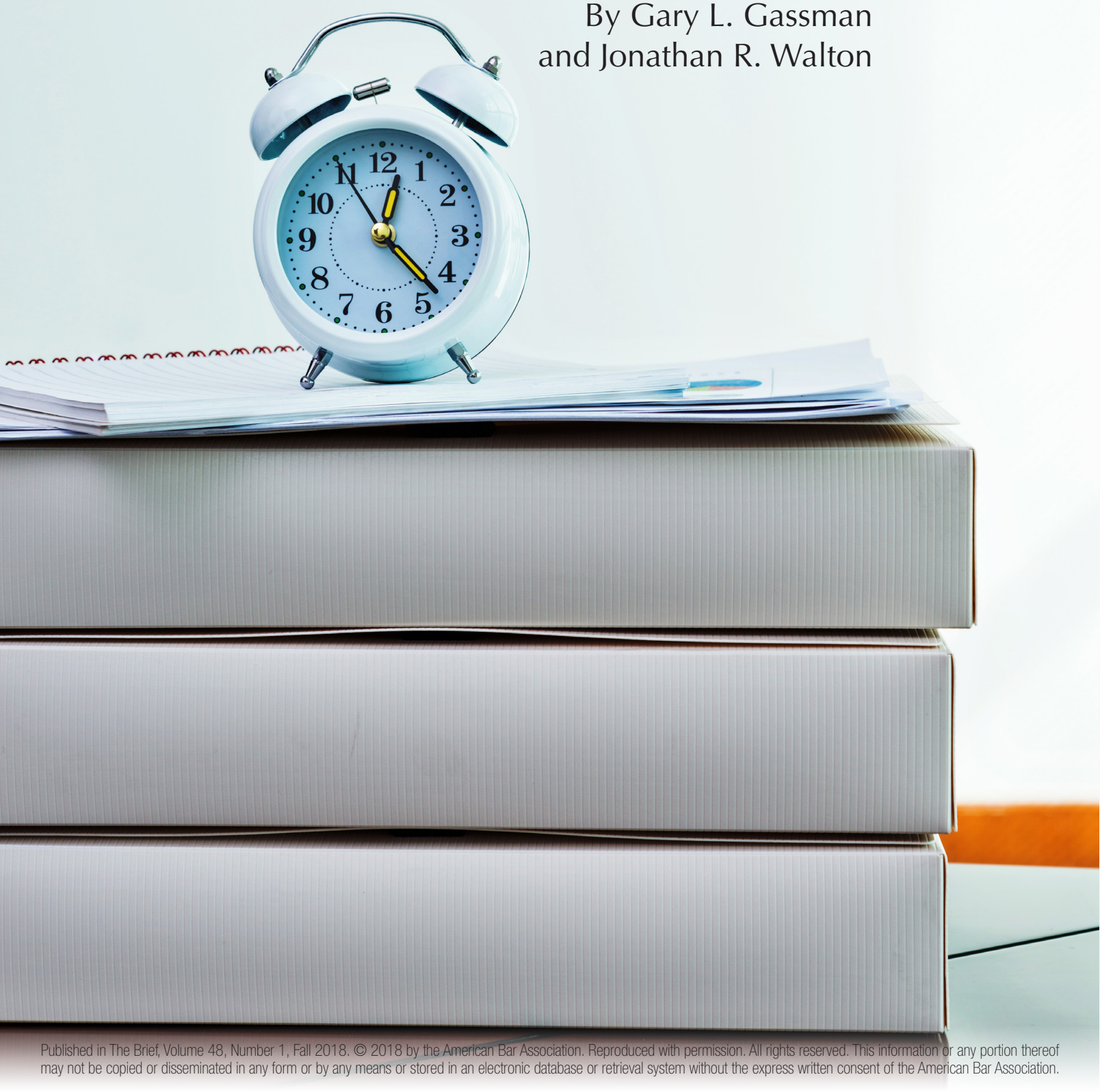

A powerful tool available to plaintiffs lawyers in litigation is a well-executed and timely policy limits demand or time limit demand to a defendant's insurer. If the policy limits demand is accepted by the insurer, the plaintiff has settled the case for the maximum that can be recovered from the defendant. If the insurer rejects a policy limits demand, it could lead, under certain circumstances, to a recovery in excess of the policy limits.

In light of the substantial damage awards that can be obtained in bad faith claims against insurers, plaintiffs attorneys have a strong incentive to seek to maneuver insurers into committing acts that may support a claim for bad faith, including rejecting a reasonable policy limits demand. Policy limits demands can be particularly problematic for claims professionals because a demand may compel them to make important decisions regarding payment of policy limits when substantial uncertainty exists regarding the case and what might happen if the case proceeds to trial.

This article summarizes the problems that policy limits and time limit demands create for insurers and plaintiffs attorneys alike; and it provides strategies on how to respond, practical tips on how to avoid committing acts that may constitute bad faith practical considerations, and guidance for plaintiffs attorneys seeking to engage insurers and insureds in serious settlement discussions.

The Duty to Settle

An insurer has a duty to settle claims against its insured under the covenant of good faith and fair dealing, which is implied in all insurance policies. The duty to settle generally requires that the insurer accept a reasonable settlement offer that is within the limits of liability of the policy, particularly where there is a substantial likelihood of recovery in excess of those policy limits should the case proceed to judgment. An insurer that unreasonably rejects a policy limits demand by placing its own interests above those of the insured may be liable for bad faith and subject to liability in excess of the policy limits, depending upon the jurisdiction.[1]

The insurer's duty to settle generally arises from policy provisions that give the insurer the sole right of control over the settlement of claims against the insured.[2] The duty to settle also arises from a perceived conflict of interest between the insurer and the insured.[3] From the insured's perspective, any settlement within the policy limits is favorable as it will not be paid by the insured. From the insurer's perspective, whether a settlement within the policy limits is favorable depends on the "probabilities of winning or losing the suit."[4]

The duty to settle—and the insurer's potential liability for an excess judgment if a within-limits settlement is rejected in bad faith—ensures that when the insurer takes a gamble with respect to the value of a case, it does so with its own money. Thus, insurers must proceed cautiously when faced with such demands.

Reasonableness of the demand. A plaintiff's policy limits demand must be "reasonable" to implicate the insurer's duty to settle. The insurer's duty to settle does not impose a "categorical obligation" to accept a plaintiff's demand when it seeks amounts within the policy limits.[5] Rather, an insurer's duty to accept a settlement demand depends on whether the demand is reasonable under the circumstances.

The reasonableness of a settlement demand is generally a question of fact. Typically, a policy limits demand is considered to be reasonable in cases where liability is clear and the injuries are so serious that a judgment in excess of the policy limits is likely.[6] For example, California law provides that a

> settlement demand is reasonable if [the insurer] knew or should have known at the time the settlement demand was rejected that the potential judgment was likely to exceed the amount of the settlement demand based on [the plaintiff's] injuries or loss and [the defendant's] probable liability.[7]

The New Jersey Supreme Court has explained that, when considering the reasonableness of a policy limits demand,

> the view of the carrier or its attorney as to liability is one important factor, [but] a good faith evaluation requires more. It includes consideration of the anticipated range of a verdict, should it be adverse; the strengths and weaknesses of all of the evidence to be presented on either side so far as known; the history of the particular geographic area in cases of similar nature; and the relative appearance, persuasiveness, and likely appeal of the claimant, the insured and the witnesses at trial.[8]

Accordingly, a strong policy limits demand must assert convincingly that the insured's liability is clear and that a judgment in excess of the policy limits is likely, and it much be supported by detailed factual support and legal analysis regarding the insured's likely exposure.

It is important to understand that policy limits demands often are made early in litigation or before litigation is commenced and may be made at a time when the plaintiffs lawyer, the insured, or the insurer is without important information regarding liability and damages. This lack of information, however, does not necessarily mean that a policy limits demand is unreasonable. The insurer owes a duty to investigate a claim and, in some jurisdictions, can be found to have acted in bad faith if it intentionally or recklessly fails to investigate a claim. In *Kelly v. State Farm Fire & Casualty Co.*,

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A policy limits demand is not always required before an insurer may have a good-faith duty to attempt to settle within the policy limits.

the Louisiana Supreme Court held that the duty to settle imposes on insurers an affirmative duty to gather information necessary to determine whether settlement is reasonable and requires a case-by-case analysis of the insurer's investigation and knowledge at the time of that investigation.[9] Thus, while the reasonableness of a settlement demand will depend on the information available to the insurer at the time of the demand,[10] the insurer has a duty to investigate and obtain relevant information if it is available. Accordingly, if more information is needed to consider properly the policy limits demand, the claims professional should request the information in writing. Likewise, plaintiffs counsel making a policy limits demand should offer to provide any further information that the insurer may need to consider the demand.

Not only will the facts and circumstances as presented to the insurer be considered in evaluating the reasonableness of a policy limits demand, but so will the relevant legal principles that go to the insured's liability in the underlying case.[11] For these reasons, it is essential that the claims professional involve defense counsel in evaluating a policy limits demand and obtain defense counsel's analysis of the strength of the plaintiff's liability case against each insured and the potential damages exposure to the insured. The claims professional should not wait for a demand to start investigating liability and damages.

Reasonableness in rejecting the demand. In general, the mere fact that an insurer rejected a settlement demand is not, by itself, conclusive evidence of the insurer's bad faith. The standard that courts typically apply is whether the insurer gave the interests of the insured the same weight and consideration that it gave its own interests in considering a settlement demand within the policy limits.[12] Courts may consider various factors to determine whether the insurer's rejection of a settlement demand was reasonable, including the strength of the plaintiff's case on liability and damages, attempts by the insurer to induce the insured to contribute to settlement, failure by the insurer to properly investigate the claim to ascertain evidence against the insured, the insurer's rejection of the advice of defense counsel or an agent, the insurer's failure to inform the insured of settlement demands, the amount of financial risk to which each party is exposed in refusing to settle, and the fault of the insured in inducing the insurer's rejection of the settlement by misleading the insurer as to the facts.[13]

Cases where an insurer's rejection of a settlement demand was found to be in bad faith typically arise when the insurer fails to provide a reasonable justification for rejecting the settlement demand.[14] In *O'Neill v. Gallant Insurance Co.*, an insurer was found liable for bad faith where the insurer's vice president rejected the advice of defense counsel and the insurer's claims department that the insured's liability was clear and decided not to settle the case without any explanation or notation in the claims diary.[15]

On the other hand, in *Pavia v. State Farm Mutual Automobile Insurance Co.*, the insurer did not act in bad faith by failing to respond to a 30-day time restricted policy limits demand even though defense counsel had advised the insurer that the insured was at fault and that damages would likely exceed the policy limits.[16] The court concluded that, at the time of the policy limits demand, the insurer was investigating a possible liability defense based on recent testimony given at the insured's deposition; and, therefore, the insurer did not act in bad faith by failing to meet the demand while continuing to investigate those issues.

In addition, some jurisdictions allow the insurer to consider coverage defenses when deciding whether to accept a policy limits demand. In *Mowry v. Badger State Mutual Casualty Co.*, the Wisconsin Supreme Court held that an insurer did not commit bad faith in rejecting two policy limits demands based on an unsuccessful coverage defense because the question of coverage under the policy was "fairly debatable."[17] A few other jurisdictions, including Illinois and New York, follow the approach of finding that it is not bad faith for an insurer to consider defenses to coverage when considering a policy limits demand.[18] In *Meadowbrook, Inc. v. Tower Insurance Co., Inc.*, the Minnesota Supreme Court concluded that the insurer did not act in bad faith by settling only the covered claims against the insured and that the insurer's duty to defend ceased once the covered claims were settled or dismissed, leaving only noncovered claims pending against the insured.[19]

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A Florida court found that a determination of whether an insurer acted in bad faith in considering coverage defenses depends on how the insurer handled the coverage defenses. An analysis of the insurer's actions includes various factors, such as insurer issuance of a reservation of rights letter, the insurer's attempts to resolve the coverage dispute promptly or in a way to limit potential prejudice to the insured, the substance of the coverage dispute and weight of legal authority on the coverage issue, the insurer's diligence and thoroughness in investigating the facts relating to coverage, and efforts made by the insurer to settle the claim in the face of the coverage dispute.[20]

In other jurisdictions, most notably California, courts have found that an insurer cannot consider coverage defenses when considering a policy limits demand.[21] The California Supreme Court has held that the

> only permissible consideration in evaluating the reasonableness of a settlement offer becomes whether, in light of the victim's injuries and the probable liability of the insured, the ultimate judgment is likely to exceed the amount of the settlement offer.[22]

Under California law, if the settled claims are later found not to be covered by the policy, the insurer may seek reimbursement from its insured.[23]

Necessity of policy limits demand to implicate a duty to settle. Many claims professionals believe that the duty to settle is tied to a plaintiff's offer of or interest in settling within the policy limits. Some jurisdictions, such as Texas, continue to follow a bright-line rule that the duty to settle does not arise until the plaintiff or insured has made a settlement demand within the policy limits.[24] Other jurisdictions, such as California, have taken a softer approach, concluding that an insurer can be liable for bad faith failure to settle in the absence of a demand or settlement offer when the insurer has a reasonable opportunity to settle within the policy limits.[25] Under this approach, a bad faith claim requires

> some evidence either that the injured party has communicated to the insurer an interest in settlement, or some other circumstances demonstrating the insurer knew that settlement within policy limits could feasibly be negotiated.[26]

An insured concerned with its own liability may want to demand in writing that the insurer undertake efforts to settle with the plaintiff.

However, courts in several jurisdictions, including Arizona and Florida, have concluded that the insurer may actually have an affirmative duty to initiate and effectuate settlement in cases where liability is clear and the injuries are so serious that a judgment in excess of the policy limits is likely.[27] Accordingly, a claims professional should not presume that in all cases it will be insulated from excess of policy limits exposure when no settlement demand within limits has been made.

Nonetheless, an Illinois appellate court warned against applying this theory of bad faith failure to settle too broadly. In *Adduci v. Vigilant Insurance Co.*, the court noted while it is settled law in Illinois that insurers are not required to initiate settlement negotiations, there is an exception "where the probability of an adverse finding on liability is considerable and the amount of probable damages would greatly exceed the insured's coverage."[28] The court noted, though,

> that this exception should be sparingly used, and then only in the most glaring cases of an insured's liability, since trial attorneys are not endowed with the gift of prophecy so as to be able to predict the precise outcome of personal injury litigation.[29]

Due to the uncertainty surrounding the necessity of a policy limits demand to give rise to a duty to settle, the claims professional, upon receipt of information indicating that a judgment in excess of the limits is likely, should consider initiating settlement discussions with the plaintiff and should document those discussions. An insured concerned with its own liability may want to demand in writing that the insurer undertake efforts to settle with the plaintiff, putting increased pressure on the insurer to settle the matter. A record showing that the insurer made efforts to reach a reasonable settlement but that the plaintiff was not interested in a within-limits settlement will be important evidence in a later bad faith action.

Policy Limits Demands, Time Limit Demands, and Setup Letters

Plaintiffs lawyers seeking to open up the policy limits should avoid "setup" letters. A setup letter is a policy limits demand that is not truly seeking a settlement for the policy limits but instead is seeking to set up a claim of bad faith against the insurer by reducing the chance that the insurer will accept the offer.

This is not a new tactic. In 1985, Justice Kaus of the California Supreme Court observed in dissent:

> It seems to me that attorneys who handle policy claims against insurance companies are no longer interested in collecting on those claims, but spend their wits and energies trying to maneuver the insurers into committing acts which the insured can later trot out as bad faith.[30]

That tactic has continued to this day. In *Wade v. Emcasco Insurance Co.*, for example, the court concluded that bad faith litigation has created a perverse incentive to plaintiffs attorneys

> to manufacture bad faith claims by shortening the length of the settlement offer, while starving the insurer of the information needed to make a fair appraisal of the case.[31]

The court suggested that courts should exercise caution in handling bad faith claims based on highly technical violations or, as the court explained, "when the gravamen of the complaint is not that the insurer has *refused* a settlement offer, but that it has *delayed* in accepting one."[32]

Identification of setup letters. Plaintiffs lawyers and insurers alike must be able to identify faulty setup letters. One red flag is a policy limits demand made quickly after an accident, thereby depriving the insurer of the ability to conduct a full investigation. Such demands are typically combined with a time limit in the hopes that the insurer cannot obtain necessary medical records or other information to conduct a full investigation. Arguably, that approach does not make for a reasonable demand. Other red flags include a policy limits demand with terms and acceptance conditions that are unreasonable or cannot possibly be met, a policy limits demand that is patently unreasonable based on the type of claim and available limits, necessary documentation that is not forthcoming from the plaintiff, and correspondence from the plaintiffs attorney that is peppered with self-serving rhetoric designed to impress the jury and establish themes for use in a later bad faith lawsuit.

A time-limited demand may indicate that the plaintiff is not interested in a within-limits settlement.

Notably, a time-limited demand may indicate that the plaintiff is not interested in a within-limits settlement. In *Miel v. State Farm Mutual Automobile Insurance Co.*, an Arizona appellate court held that it was error for the trial court to refuse to allow evidence regarding the plaintiff's motives in setting a time limit for the settlement offer.[33] The court concluded that the "reasons the Plaintiff adhered to the deadline are relevant to whether the insurer acted unreasonably" because "the reasons for a specific deadline may be relevant to whether the claimant has 'set up' the insurer for a claim of bad faith."[34] Similarly, an Illinois appellate court upheld the dismissal of a bad faith claim where an insurer attempted to accept a time limit settlement demand 40 days after it expired, explaining thus:

> No facts sufficiently indicate why the claimants found it impossible to accept the offer at this time, so as to fairly place the blame for failure of settlement upon Insurer. The allegations of the complaint simply do not show why the offer would have been good on May 7, 1976, but was not acceptable on June 18, 1976.[35]

Therefore, from the perspective of the plaintiffs lawyer, a policy limits demand should be supported by factual and legal analysis as to why the insured's liability is likely to exceed the policy limits, and any time limits or conditions should be supported by the circumstances of the case and a reasonable explanation. It is also important that any conditions or time limits be explained with as much clarity as possible (e.g., whether a demand that policy limits are due within 20 days requires a response within 20 days or tendering of the limits within 20 days). Often, there will be no sufficient explanation or support for the artificially imposed time limit.

Responses to setup letters. If the demand is unclear or ambiguous, the claims professional should make a written request for clarification as soon as possible. When seeking clarification, the insurer should clearly state that the demand is not being rejected at that time.

Similarly, if more time or information is necessary before the insurer can adequately respond to the demand, the claims professional should make a written request for a reasonable extension, explaining what further information or investigation is necessary and the reasons why this is required. (Note: If requesting additional information or documents, the claims professional should be sure not to demand more information than is reasonably necessary to establish that the claim is worth more than the policy limits.) If the plaintiffs attorney will not allow more time and does not provide a reasonable explanation, this may indicate that the plaintiff is not actually interested in a within-limits settlement.

Regardless of the potential weakness of the setup letter, when confronted with such a letter, the insurer must document all

negotiations and maintain a log of critical dates, noting what transpired on each date. The insurer also should be sure to document what is being done from a claim-handling perspective during this time frame, noting what additional information is necessary to investigate the claim and settlement demand, as well as the reasons why the settlement demand cannot reasonably and realistically be assessed. This documentation will be a key defense in any subsequent bad faith litigation.

Reasonable Policy Limits Demands and Responses

It is important to note that even if a policy limits demand is "reasonable," the insurer may have valid grounds for rejecting a settlement within policy limits. For example, the demand letter may require the insurer or insured to fulfill various conditions precedent to valid acceptance of the settlement demand. Certain conditions may render a settlement demand unreasonable and thus preclude bad faith liability.

Involvement of insured. Often, the conditions precedent to settlement must be fulfilled by the insured, rather than the insurer, such as providing documents or information or declaring that the insured does not have any other insurance. If a policy limits demand contains conditions that require the involvement of the insured, the claims professional should immediately contact the insured by phone and in writing and explain, in writing, that the case may not settle unless certain conditions are met. If the insured refuses to provide the requested information or documents, the insurer should confirm the insured's position in writing.

Involvement by third parties. A policy limits demand may be conditioned on actions by third parties outside of the insurer-insured relationship. In *Cotton States Mutual Insurance Co. v. Brightman*, an insurer argued that it did not act in bad faith by failing to pay its policy limits because the demand was contingent on another insurer also paying its policy limits.[36] The court held that despite the condition, the insurer could have taken the steps under its control—paying its own policy limits—to protect itself from liability in excess of the policy limits.[37]

Release of all claims. A policy limits demand that expressly does not include a release of all claims may present another obstacle to the plaintiffs lawyer or appropriate grounds for the insurer to reject the demand.

For example, under California law, an insurer acts in bad faith by paying its policy limits to release one insured while leaving another insured without coverage.[38] Thus, under California law, a policy limits demand does not trigger the duty to settle unless it includes a complete release of all insureds.[39]

Most states, however, allow insurers to pay their policy limits to settle claims on behalf of fewer than all insureds, as long as all insureds are fully advised of the matter and the insurer does what it can to limit liability and protect its insureds. Recently, the U.S. Court of Appeals for the Fifth Circuit, applying Texas law, concluded that an insurer acted in bad faith by failing to accept a reasonable policy limits demand applying to one of two insured defendants, which would have left the other insured without policy proceeds from which to pay a settlement or judgment.[40]

Lack of information. A lack of information also may be reasonable grounds to reject a within-limits settlement demand. If a settlement demand is not supported by necessary evidence or information, the plaintiff's failure or refusal to provide key information, such as medical records, may significantly affect whether the insurer's rejection of the settlement demand was reasonable.[41] Thus, plaintiffs attorneys seeking to perfect a policy limits demand should be sure to provide all key information supportive of the claim.

Reliance on counsel. In addition, an insurer's reliance on the advice of competent defense counsel in rejecting a settlement may serve as a defense to a bad faith failure to settle claim.[42] One court has suggested, however, that because the ultimate responsibility in settlement matters rests with the insurer, the reliance on the advice of counsel should not be considered in an action for bad faith failure to settle[43].

Best practices. Just as a plaintiff's policy limits demand should contain a comprehensive analysis of the insured's liability and exposure, any response to a policy limits demand should reflect a comprehensive consideration of and response to the plaintiff's assertions regarding the insured's liability and damages. The claims professional should document the professional's actions in evaluating the demand and the information available to the claims professional when evaluating the demand. The claims professional must ensure that its response to the policy limits demand is timely; and if an extension is needed, it should request an extension and confirm any extensions in writing. All responses to a policy limits demand should be written with clarity and with an eye toward how they will be perceived by a jury.

Moreover, it is essential that the insured be kept informed. If an insured expresses a preference to settle or not to settle, the insurer should give careful consideration to the reasons and facts given. While the insurer may have control over the settlement, the insurer's ultimate obligation is to the insured.

Conclusion

Plaintiffs lawyers and insurers must take certain actions to maximize their respective situations when policy limits demands are at issue.

To create a strong policy limits demand, plaintiffs lawyers should provide a comprehensive analysis of the facts and law supporting the conclusion that the insured likely

will face exposure in excess of the policy limits. In addition, plaintiffs lawyers should place conditions, such as a time limit, on the insurer's acceptance of the demand only when reasonably necessary under the specific circumstances of the case. Furthermore, the plaintiffs lawyer should be prepared to provide the insurer with any information that the insurer may reasonably require to assess the demand.

In terms of the claims professional, an insurer faced with a policy limits demand or time limit demand can protect itself from bad faith liability by taking all reasonable and necessary steps to investigate the claim, to determine whether payment of the policy limits is warranted, and to ensure that its actions are well documented. The claims professional should take a proactive stance in completing its investigation and should not wait to receive a settlement demand from the plaintiff. In addition, the insurer should obtain defense counsel's reasoned opinion on the chances of defeating liability and the likely range of damages should the matter proceed to judgment; defense counsel's evaluation report will help to demonstrate that the evaluation was thoughtful and unbiased. If both the exposure and liability indicate that the policy limits are likely to be exhausted, and there are no other considerations or defenses available in the jurisdiction, the insurer should tender the policy limits without delay.

It is worth noting that a bad faith failure to settle case arises only after an excess verdict has been entered against the insured, and this fact alone may make it appear to the trier of fact that the insurer should have attempted to settle. However, the true question in any failure to settle claim is whether the insurer's conduct was reasonable at the time. For this reason, it is essential that a plaintiff's demands and conditions are reasonable and supported by the facts and the law. Similarly, for the defense of a potential future bad faith claim, it is essential that the insurer's considerations and decisions are well documented in the claim file and that the insurer implements a well-reasoned and practical approach in its claims handling and assessment, which should give significant consideration to the interests of the insured. ■

Notes

1. Badillo v. Mid Century Ins. Co., 121 P.3d 1080 (Okla. 2005).
2. Emcasco Ins. Co. v. Am. Int'l Specialty Lines Ins. Co., 438 F.3d 519 (5th Cir. 2006).
3. Merritt v. Reserve Ins. Co., 34 Cal. App. 3d 858 (1973).
4. *Id.* at 870.
5. Cont'l Cas. Co. v. U.S. Fid. & Guar. Co., 516 F. Supp. 384 (N.D. Cal. 1981).
6. Kropilak v. 21st Century Sec. Ins. Co., 2014 WL 2884022 (M.D. Fla. June 25, 2014); Peterson v. St. Paul Fire & Marine Ins. Co., 239 P.3d 901 (Mont. 2010).
7. CACI Jury Instruction No. 2334 (2017).
8. Rova Farms Resorts, Inc. v. Investors Ins. Co. of Am., 323 A.2d 495, 503 (N.J. 1974).
9. 169 So. 3d 328 (La. 2015).
10. Walbrook Ins. Co. v. Liberty Mut. Ins. Co., 5 Cal. App. 4th 1445 (1992).
11. *Peterson*, 239 P.3d 901.
12. Kissoondath v. U.S. Fire Ins. Co., 620 N.W.2d 909 (Minn. Ct. App. 2001).
13. Bollinger v. Nuss, 449 P.2d 502 (Kan. 1969); State Auto. Ins. Co. of Columbus, Ohio v. Rowland, 427 S.W.2d 30 (Tenn. 1968).
14. Singleton v. State Farm Fire & Cas. Co., 928 So. 2d 280 (Ala. 2005).
15. 329 Ill. App. 3d 1166 (2002).
16. 626 N.E.2d 24 (N.Y. 1993).
17. 385 N.W.2d 171, 181 (Wis. 1986).
18. *See* Hunt v. State Farm Mut. Auto. Ins. Co., 994 N.E.2d 561 (Ill. App. Ct. 2013); Redcross v. Aetna Cas. & Sur. Co., 260 A.D.2d 908 (N.Y. 1999).
19. 559 N.W.2d 441 (Minn. 1997).
20. Robinson v. State Farm Fire & Cas. Co., 583 So. 2d 1063 (Fla. Dist. Ct. App. 1991).
21. Johansen v. Cal. State Auto. Ass'n Inter-Ins. Bureau, 538 P.2d 744 (Cal. 1975); Magnum Foods, Inc. v. Cont'l Ins. Co., 36 F.3d 1491 (10th Cir. 1994).
22. *Johansen*, 538 P.2d at 748.
23. Blue Ridge Ins. Co. v. Jacobsen, 22 P.3d 313 (Cal. 2001).
24. Rocor Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 77 S.W.3d 253 (Tex. 2002); Purscell v. TICO Ins. Co., 959 F. Supp. 2d 1195 (W.D. Me. 2013); Snodgrass v. State Farm Mut. Auto. Ins. Co., 15 Kan. App. 2d 153 (1991).
25. Reid v. Mercury Ins. Co., 220 Cal. App. 4th 262 (2013).
26. *Id.* at 272.
27. Fulton v. Woodford, 545 P.2d 979 (Ariz. 1976); Powell v. Prudential Prop. & Cas. Ins. Co., 584 So. 2d 12 (Fla. Dist. Ct. App. 1991); City of Hobbs v. Hartford Fire Ins. Co., 162 F.3d 576 (10th Cir. 1998).
28. 424 N.E.2d 645, 649 (Ill. App. Ct. 1981).
29. *Id.* at 649-50.
30. White v. W. Title Ins. Co., 710 P.2d 309, 328 no. 2 (Cal. 1985).
31. 483 F.3d 657, 669 (10th Cir. 2007).
32. *Id.* (emphasis in original).
33. 912 P.2d 1333 (Ariz. Ct. App. 1995).
34. *Id.* at 110-11.
35. Adduci v. Vigilant Ins. Co., 424 N.E.2d 645, 649 (Ill. App. Ct. 1981).
36. 580 S.E.2d 519 (Ga. 2003).
37. *Id.*
38. Lehto v. Allstate Ins. Co., 36 Cal. Rptr. 814 (Cal. Ct. App. 1995).
39. Graciano v. Mercury Gen. Corp., 179 Cal. Rptr. 717 (Cal. Ct. App. 2014).
40. OneBeacon Ins. Co. v. T. Wade Welch & Assocs., 841 F.3d 669 (5th Cir. 2016).
41. Robin v. Allstate Ins. Co., 870 So. 2d 402 (La. Ct. App. 2004).
42. Westchester Fire Ins. Co. v. Mid-Continent Cas. Co., 954 F. Supp. 2d 1374 (S.D. Fla. 2013).
43. Highway Ins. Underwriters v. Lufkin-Beaumont Motor Coaches, 215 S.W.2s 904, 932 (Tex. Ct. App. 1948).