

## Illinois Court Outlines Elements to Consider for Good Faith Analysis of Settlement Demand

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To settle or not to settle: that is the question for liability insurers. If you are pondering whether you must accept a plaintiff's settlement offer, read on. A recent Illinois case, *Huang v. Brenson*, 7 N.E.3d 729 (Ill. App. Ct. 2014), may shed some light.

Plaintiff John Z. Huang represented Yongping Zhou in a deportation suit. Mid-suit, Zhou terminated the representation and retained another attorney. Throughout the course of the litigation, Zhou hired several more attorneys and ultimately succeeded in vacating his domestic violence conviction after spending two years in an Immigration and Naturalization Service detention center. Zhou then sued Huang for legal malpractice.

Huang's professional liability insurer retained defendant Ian Brenson to defend Huang in the malpractice suit. At trial, the jury awarded Zhou \$4 million. Huang terminated Brenson and retained two new attorneys for post-trial proceedings. The appellate court held that the trial court had made an error — Zhou should have been prohibited from recovering damages for emotional distress — and reversed and remanded the case with instructions to enter judgment in favor of Huang. In December 2010, Huang filed the instant case against Brenson, claiming he had committed legal malpractice while defending Huang in the Zhou action.

The circuit court dismissed Huang's case, and the Appellate Court of Illinois, First District, Third Division affirmed. First, the appellate court rejected Huang's legal malpractice claim because the circuit court had properly decided that Brenson did not cause Huang's damages as a matter of law. Second, the appellate court rejected Huang's argument that Brenson should be judicially estopped from relying on the work of the post-trial and appellate attorneys.

Finally, the appellate court turned to the bad faith issue. It rejected Huang's argument that Brenson breached his fiduciary duty when he failed to convey to Huang the settlement demands Zhou had made. The court noted that in three situations, a settlement would have precluded the trial: (1) if Huang could force his insurance company to settle, (2) if Huang could have settled using his own assets, and (3) if Huang could use a combination of insurance company funds and his own assets to settle the case.

Observing that Huang had not alleged that any of the three situations was a possibility, the court focused on the third — Huang had not alleged facts showing that "the insurer would have or should have, in good faith, accepted Zhou's settlement offer." The court stated that "an insurance company need not always cede to the demands of its insured to settle." Rather, "[i]f an opportunity appears to settle within the policy limits, thereby protecting the insured from excess liability, the insurer must faithfully consider it, giving the insured's interests at least as much respect as its own .... The insurer need not submit to extortion; it may reject a bad deal without waiving the protection the policy limit gives it against the vagaries of lawsuits. But if the honest and prudent course is to settle, the insurer must follow that route .... [A]n insurer that undertakes the defense of a suit against the insured, where the damages sought are in excess of the policy limits, cannot arbitrarily refuse a settlement within policy limits."

The court explained that Huang had not alleged or asserted facts showing that Zhou's settlement demands of \$400,000, \$500,000, \$2 million or \$3 million were reasonable. Huang had not cited any cases or jury verdicts on similar claims, and Huang had not established that he could have forced or convinced the insurance company to settle and thereby avoid trial. Therefore, the court concluded, Huang had failed to establish that Brenson's breach of fiduciary duty in failing to relay Zhou's settlement demands had proximately caused his damages.

In short, this case provides guidance on when an insurer should, in good faith, accept a plaintiff's settlement offer. Although you must settle when it is "the honest and prudent course," you need not submit to extortion or accept an unreasonable offer. In other words — when offered a bad deal, to thine own self be true.

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**To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Kevin Kamraczewski at [kkamraczewski@cozen.com](mailto:kkamraczewski@cozen.com) or (312) 382-3156 or Megan Whitehill at [mwhitehill@cozen.com](mailto:mwhitehill@cozen.com) or (212) 453-3721.**