SMITH FREED & EBERHARD P.C.

OREGON LAW UPDATE

case in point...

Mistake on Policy Limits Offer Did Not Bind Insurer to Settlement Agreement

From the desk of Jeff Eberhard: An insurer makes an offer of settlement at its policy limits. After the offer is accepted, it is discovered that the policy limits were not as the insurer had understood and represented them to be but rather significantly more. Will the court bind the insurer to the actual policy limits or void the settlement agreement altogether? Read on to find out.

Claims Pointer: Generally, the court will not change a settlement agreement when an insurer mistakenly offers policy limits unless there is evidence that the parties had a specific agreement to settle for actual policy limits compared to a specific dollar amount. Therefore, it is always a best practice to include the actual policy limits amount in any offer in order to avoid uncertainty or a potential modification by the court to an amount more than the insurer was willing to pay.

Emerson v. Kusano, 100812086, 2014 WL 258853 (Or. Ct. App. Jan. 23, 2014)

The plaintiff in this case (Emerson) brought an action against the defendant (Kusano) for personal injuries she sustained in an automobile accident. Emerson alleged damages of $171,000. The parties entered into settlement negotiations and an adjuster for defendant's insurer telephoned the plaintiff's attorney and offered to settle the case for policy limits. In a confirmation email later that same day, the adjuster stated that they were tendering policy limits of $50,000, inclusive of all costs. Two days later, plaintiff's counsel emailed defendant's counsel, asking, "Do you remember limits off hand?" Defendant's counsel responded by e-mail, "50." Several days went by before plaintiff's counsel accepted the offer. A week later, it was discovered that the policy limits were not in fact $50,000 but instead $100,000.

Emerson sought to obtain a settlement for the actual policy limits of $100,000, but the insurer declined, opting to continue with the scheduled trial. Emerson then brought action seeking to reform (modify) the parties' settlement agreement to require the insurer to pay its policy limits of $100,000. The trial court granted Emerson's motion, modifying the settlement agreement to the actual policy limit of $100,000.

On appeal, the Court of Appeals analyzed whether the parties had previously reached a complete and mutual understanding with respect to all of the essential terms of their settlement agreement. If so, then there would be an "antecedent agreement" allowing the trial court to properly intervene to modify the settlement agreement to the correct policy limits.

The court noted that there must be evidence that the trial court could find clear and convincing that there was a complete and mutual understanding to settle for policy limits, i.e., that the parties had an agreement to settle for actual policy limits rather than for a specific dollar amount. The court stated that there is evidence that both parties mistakenly understood that policy limits were $50,000, but there is no evidence that the parties had an agreement as to what the settlement would have been had the parties been aware of the actual policy limits. For these reasons, the court concluded that the trial court could not find clear and convincing evidence that the parties had a complete and mutual understanding to settle for policy limits of $100,000. The Court of Appeals ruled that the trial court erred in reforming the contract to those terms, that there was no enforceable agreement and sent the case back to the trial court to determine the value of plaintiff's claim.

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