

Dealing with Claimant Requests for Information on Other Sources of Recovery*

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Even when the insurer offers its policy limits, claimants often wish to verify the lack of other sources of recovery before agreeing to give a release. This may involve inquiries about such things as other insurance, whether the insured was acting in the course of some employment or agency, and/or other assets that might be subject to execution. If the insurer fails to notify its insured about such requests and that failure causes a settlement opportunity to be lost, the insurer may be liable for any resulting excess judgment. *Badillo v. Mid Century Ins. Co.*, 2005 OK 48, 31-32; The insurer's duty may include providing "reasonable information concerning the statement request and settlement implications thereof in order for [the insured] to have necessary input concerning the request so that an informed decision as to how best to respond could be formulated." *Id.* 31.

Requests for information from an insured can be difficult to satisfy, especially if the insured is unresponsive or uncooperative. Given the consequences of failure, insurers would be well advised to go one or more extra miles in making such efforts. The insurer did that in *Hinson v. Titan Insurance Co.* 127 F. Supp. 2d 1249 (N.D. Fla. 2015), and was rewarded by rejection of the failure to settle claim.

On September 27, 2007, Hinson, insured by Titan, was driving an auto that collided with a motorcycle ridden by Almand. Hinson's policy had limits of \$10,000 per person and \$20,000 per occurrence. Hinson reported the collision to Titan the following day, and the adjuster, Collins, spoke that afternoon with Almand's wife, learning that Almand was in intensive care with a crushed leg. Collins also spoke with Hinson, obtaining a recorded statement and explaining his exposure to liability in excess of limits (information also conveyed in a letter sent

that day). Also that day, Collins requested an appraisal of the motorcycle. Collins quickly concluded that Hinson was likely to be found liable. On October 1, she learned that Almand's medical expenses had reached about \$69,000. She immediately send Almand a letter offering to pay the \$10,000 per person limit, enclosing a release. By letter dated October 16, Almand's counsel, Bradford, replied that he was investigating and not ready to settle. Nonetheless, the offer was renewed on November 7 and a tender of the \$10,000 made on November 19. *Id.* at 1251-52.

On December 26, Titan received a time-limit demand letter from Bradford, dated December 21. It demanded (1) the \$10,000 bodily injury limit, (2) payment for property damage of \$6500 plus interest plus the specified cost of certain upgrades to the motorcycle, and (3) an affidavit from Hinson identifying any other applicable insurance. The deadline for compliance was January 10. *Id.* at 1252-53.

Moore, who was then handling that claim, tried to reach Hinson by phone on January 2, speaking instead to his fiancé, Kilpatrick, whom she told about the settlement offer and the need for an affidavit. (Kilpatrick was also listed in the policy as a driver.) According to Moore's claim notes, Kilpatrick said she would have Hinson call back. Not having heard from Hinson, Moore again tried to reach him on January 3 or 4, and sent him a letter on January 4, explaining the urgent need for the affidavit, enclosing a draft, providing a number to which it could be faxed, and urging him to consult a lawyer. She also had a copy of the letter hand delivered to Hinson's home by Titan's claim manger, who testified that he gave it to Kilpatrick on January 4. (Hinson denied having gotten it and said that Kilpatrick had not told him of any such letter, but then admitted that it was possible that he might have gotten it.) *Id.* at 1253.

On January 10, Moore had not received any affidavit from Hinson. She responded to the demand, enclosing checks for \$10,000 for bodily injury and \$10,750.51 for property damage. She explained her efforts to obtain the affidavit and said she would continue trying and would

supply the affidavit as soon as she could. Bradford returned the checks on January 16, stating that Hinson would now file suit. Moore sent Hinson a letter on January 23, informing him that suit might soon be filed and asking him to call if he received suit papers. Moore's claim notes indicate that Hinson called on February 1 to inform her of service and that he told her that he had been busy and could not get to an office to fax the affidavit. (Hinson denied any such conversation.) Titan appointed defense counsel, who forwarded an affidavit on February 14. *Id.* at 1253-54.

Almand recovered judgment against Hinson of \$1,968,392.42 and his wife recovered a judgment for \$140,000. Bradford sent Hinson's counsel a proposal to stay execution on the excess portion of the judgment, if (a) Titan would pay policy limits for both bodily injury and property damage, (b) Hinson would not appeal and (c) Hinson would file a bad faith suit all of whose proceeds would go to Almand. Upon conclusion of the bad faith litigation, Hinson would be released and the judgment satisfied. Instead, Titan filed an appeal, though the judgment was affirmed. *Id.* at 1254 & n.9.

In the bad faith action, the district court granted summary judgment to Titan. *Id.* at 1257.

As to the time-limit demand, the court reasoned that

While the record reflects that there was a possibility of settlement in January 2009 with Almand's time limited demand, it is also undisputed that Hinson failed to timely return the required affidavit to meet the demand. Hinson argues there is a question of fact because he denied receiving the demand and argues Titan failed to make a diligent effort to timely deliver and secure his affidavit regarding other insurance, but the record does not support these assertions. The record reflects that Moore sent a letter to Hinson's address, made several telephone calls to his number, and arranged for personal delivery of the affidavit to his home. Although the Court has considered and accepts Hinson's deposition testimony that he did not see the letter or receive mail from Titan, in light of Moore's undisputed efforts to obtain the affidavit, the Court finds that Hinson has not demonstrated a question of material fact as to whether Titan acted in bad faith. The fact that he did not receive or see the letter or affidavit does not contradict the

claims adjusters' contemporaneous notes and testimony about their actions and efforts; and, although Hinson could not recall this either, he did follow Moore's instructions to fax the affidavit from the Nationwide office, when she finally reached him by telephone after the 20-day deadline had expired. Even assuming that Moore could have attempted to call at better times or more often, as Hinson suggests, or that she should have requested an extension of time to return the affidavit, this amounts to negligence, at best, and falls far short of showing that, under the totality of the circumstances, Titan was acting solely in its own best interests and to Hinson's detriment. The record shows that Moore attempted to notify Hinson and timely responded to Almand's demand on Hinson's behalf with everything required, except for the affidavit, which Hinson was responsible to provide. The totality of the circumstances demonstrate that Titan diligently pursued a settlement; advised Hinson of the risks of an excess judgment, of settlement opportunities, and the probable outcome of the litigation; and tendered checks on more than one occasion, but that Almand (whose medical bills far exceeded the policy limits) refused to settle because his demand was not completely met within his 20-day deadline—a factor attributable to Hinson. On this record, the failure to meet the 20-day deadline of Almand's demand letter cannot fairly be attributed to Titan's bad faith. [*Id.* at 1256-57 (footnote and citation omitted).]

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