

Tenth Circuit Holds Early Tender of Policy Limits Bars Bad Faith Liability

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In a recent opinion, *Jenkins v. Prime Ins. Co.*, 182 F.4th 1214 (10th Cir. 2026), the U.S. Court of Appeals for the Tenth Circuit held that an insurer facing a \$60 million underlying judgment was protected from bad faith liability because of an early tender of the policy limits, which was rejected by the claimant.

In February 2013, a patient died during a liposuction procedure performed at a plastic surgery center owned by CLJ Healthcare, LLC (“CLJ”). The incident led to years of lengthy, protracted litigation. CLJ was insured by Prime Insurance and also had a separate policy through Owners Insurance Company.

The patient’s father, Hal Jenkins, retained counsel. In April 2013, Mr. Jenkins’ counsel communicated with Prime’s claims adjuster and stated, “I think, in good faith, you should tender your limits for a limited release in the next two weeks.” Prime responded that it was awaiting a report from the medical examiner and that, “depending on what the examiner found, Prime would be happy to consider any reasonable demand for settlement.”

Before receiving the report, Jenkins filed suit against CLJ and the surgeon. The following day, Prime advised Jenkins’ counsel to inquire if Jenkins would be amenable to a settlement before Prime retained defense counsel. Prime explained that the applicable policy limit was \$50,000 and that limit would be eroded by defense costs. Jenkins declined. Prime tendered the \$50,000 limit anyway in a letter to Jenkins and CLJ. The letter explained that if the tender was rejected, Prime would incur defense costs which would erode the limit. Prime also encouraged CLJ to retain separate counsel. Jenkins rejected the \$50,000 tender.

In November 2013, Prime sent a separate letter to CLJ advising that Jenkins had rejected the offer and reminding CLJ that the limit would be depleted by any costs incurred in the defense. Prime offered to continue paying for the defense until the \$50,000 limit was exhausted or alternatively offered to tender to CLJ the remaining amount of the limit for CLJ to use for defense or settlement of the claim. Prime again advised CLJ to consult with separate counsel.

In April 2014, Jenkins sent a letter to Prime and CLJ proposing a settlement of \$2.1 million, consisting of the \$2,000,000 Owners policy limit and \$100,000 from Prime, based on an apparent misunderstanding of Prime’s limit. The settlement offer was “contingent” on Prime “tendering its available limits of \$100,000.” Two days after the demand was made, Prime clarified that its limit was \$50,000, not \$100,000, and explained that the limit had since been eroded by defense costs. Prime offered the remaining limit of \$39,000. Owners ultimately denied coverage for the claim entirely and rejected the demand.

Subsequently, Jenkins entered into an agreement with CLJ, in which CLJ assigned to Jenkins its rights to assert a bad faith claim against Prime and CLJ would decline to defend itself in the malpractice suit. The malpractice suit resulted in an uncontested judgment for \$60 million against CLJ.

Jenkins and CLJ thereafter sued Prime for bad faith in the U.S. District Court for the District of Utah, ultimately resulting in summary judgment in favor of Prime. CLJ and Jenkins appealed to the Tenth Circuit.

CLJ and Jenkins argued that Prime did not properly explain the concept of an eroding policy limit and ensure that CLJ understood the policy. The district court disagreed, explaining that each party has the burden to read and understand the terms of a contract. On appeal, the Tenth Circuit affirmed, stating that while the Utah Supreme Court hasn't squarely addressed an insurer's duty to explain the terms of an insurance policy, it predicted that the Utah Supreme Court would not ordinarily require an insurer to explain the policy terms absent an ambiguity or evidence of fraud. Moreover, the Tenth Circuit also noted that while Prime didn't need to explain the coverage, the evidence reflected that it did in fact provide an explanation.

Jenkins and CLJ also argued that Prime should have offered the \$50,000 limit in April 2013. The Tenth Circuit found that Jenkins' April 2013 email was only an invitation to make an offer, rather than an actual offer, and regardless, it was reasonable for Prime to wait for the medical examiner's findings. In fact, the surgeon had told Prime that the death had probably resulted from a bad batch of anesthetic, and the eventual medical report attributed the death to natural causes.

Jenkins and CLJ also argued that when Jenkins made the \$2.1 million demand in April 2014, Prime acted in bad faith by merely offering the remaining limits under the Prime policy, rather than explaining to CLJ its ability to contribute up to the \$100,000 Jenkins demanded from Prime. The district court held that there was no duty to generally advise CLJ on these issues. The court noted that Prime had recommended that CLJ retain personal counsel on more than one occasion and otherwise did what was required to protect CLJ's interest by promptly communicating with CLJ and Jenkins' counsel regarding the limits and tendering all available policy funds. The Tenth Circuit agreed, noting that the \$100,000 requested from Prime was only a "contingency," and Prime had no reason to think that CLJ could have settled with Jenkins by contributing the remaining \$61,000, because the global demand was \$2.1 million, not a separate demand to Prime for \$100,000.

Because Jenkins and CLJ did not identify evidence that would show bad faith, the Tenth Circuit affirmed the district court's grant of summary judgment in favor of Prime.

This case illustrates the importance of prompt, frequent, and clear communication with both the insured and the claimant and continued efforts to settle within the policy limits.

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