

6th Circ. Upholds No-Coverage Ruling For \$13M Loss

By **Ganesh Setty**

Law360 (April 10, 2025, 8:06 PM EDT) -- Errors and omissions insurers for two Liberty Mutual units owe no coverage for the units' \$13.3 million coverage payment to a motel operator found civilly liable for a woman's murder, the Sixth Circuit ruled Thursday, finding a settlement demand letter did not constitute a claim under the E&O policies.

Affirming summary judgment for primary and excess E&O insurers Columbia Casualty Co. and ACE American Insurance Co., a unanimous three-judge panel noted the at-issue letter solely sought to settle claims against the motel operator, but not the units, State Auto Mutual Insurance Co. and Rockhill Insurance Co. They are collectively referred to in court filings as State Auto.

"To be sure, the 2017 demand letter is 'a written demand for monetary damages.' In it, the estate expressly demands \$5 million," Circuit Judge Julia Smith Gibbons wrote in the unpublished opinion.

"The demand, however, is to settle 'all claims the estate has against The Waves,'" she continued, referring to State Auto's insured, The Waves of Hialeah Inc. "It therefore seeks payment from Waves, not State Auto."

According to court filings, the insurance dispute stems from a wrongful death lawsuit filed against Waves in Florida in state court by the estate of Yaimi Machado, who was murdered in April 2016 at a motel Waves operated.

State Auto agreed to defend Waves under a general liability policy it issued providing up to \$1 million in coverage. Columbia and ACE, meanwhile, provided E&O insurance to State Auto under policies collectively spanning between December 2016 and December 2018.

After the lawsuit was filed, Machado's estate first sent a letter in August 2016 to Waves demanding \$1 million to settle the lawsuit, further directing the demand to State Auto and arguing the insurer's failure to settle could expose it to liability under Florida's insurance bad faith law. State Auto did not accept it, and after the estate later sent a separate letter roughly a year later in July 2017 demanding \$5 million and accusing State Auto of rejecting the prior demand in bad faith, State Auto again passed on the offer.

A state jury ultimately ruled against Waves, awarding the estate \$12 million in damages. After Waves **lost on appeal** in February 2020, the trial court entered a final judgment of \$13.3 million thereafter in April 2020, adding interest.

Columbia then kicked off the E&O coverage litigation in January 2022 in Ohio federal court, and prevailed with ACE on **summary judgment** in March 2024. The dispute centered specifically on the estate's second demand letter sent in July 2017.

On Thursday, Judge Gibbons further wrote that "[e]ven if the letter were addressed to State Auto, the settlement demand was directed at Waves, the party allegedly liable for Machado's death and the estate's resulting damages."

"Because the demand letter was directed at Waves, it did not assert a bad faith 'claim' against State Auto," she said, later writing "alleging that State Auto acted in bad faith is not the same as seeking payment from State Auto on account of its alleged bad faith conduct."

The panel further addressed State Auto's contention that the July 2017 letter was instead a

"conditional claim," but they pointed out in a footnote that "states courts are divided on whether a conditional claim can trigger insurance coverage."

An insurer, meanwhile, is liable for bad faith failure to settle once a final judgment exceeding applicable policy limits is actually handed down, according to Thursday's decision.

"Even if Ohio law recognized such claims, State Auto's conditional claim would have expired before judgment," Judge Gibbons added, highlighting that the demand expired in August 2017, before the underlying judgment was finalized in April 2020.

The E&O policies also carved a distinction between a claim and "circumstance," the panel found, noting they imposed a 30-day reporting deadline for a claim, but an insured only had to report a "circumstance" that "may reasonably be expected to give rise" to a claim at its own discretion.

"It would be odd for the policy to establish a reporting framework for actual claims versus potential claims if, as State Auto insists, a mere intention to hold the insured responsible was the same as an actual claim," Judge Gibbons concluded for the panel.

Representatives of the parties did not immediately respond to requests for comment.

Circuit Judges Eric L. Clay, Julia Smith Gibbons and Richard Allen Griffin sat on the panel.

Columbia Casualty is represented by Jennifer L. Wilson and Myrl H. Shoemaker III of Freund Freeze & Arnold.

ACE is represented by Arthur J. McColgan and Alla Cherkassky Galati of Walker Wilcox Matousek LLP.

State Auto and Rockhill are represented by James R. Gallagher of Gallagher Gams Tallan Barnes & Littrell LLP and Stephen T. Raptis of Reed Smith LLP.

The case is Columbia Casualty Co. et al. v. State Automobile Mutual Insurance Co. et al., case number 24-3338, in the U.S. Court of Appeals for the Sixth Circuit.

—Additional reporting by Hope Patti and Y. Peter Kang. Editing by Amy Rowe.