

Insured's Failure to Obtain Consent to Settlement Deemed Prejudicial

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The Western District of Pennsylvania recently granted an insurer's motion to dismiss breach of contract and bad faith claims with prejudice after finding that an insured had no basis to sue its insurer for reimbursement of a settlement payment when the insured did not seek the insurer's consent before entering into the settlement, pursuant to the terms of a business insurance policy. See [RealogicHR, LLC v. Continental Cas. Co.](#), 2022 WL 17904245 (W.D. Pa. Dec. 23, 2022).

In [RealogicHR](#), the insured provided temporary and permanent placements of registered nurses, licensed practical nurses, and certified nursing assistants. The insurer issued a business insurance policy ("Policy") to the insured. The insured alleged that a covered claim arose under the Policy when two of its employees were accused of misconduct against patients. When a patient's family retained counsel and threatened legal action against the insured, the insured negotiated a resolution of the claim and "promptly paid the claim." After reaching the settlement, the insured notified the insurer of the claim and settlement and sought reimbursement of the settlement funds. The insurer denied coverage for the claim because the insured did not seek consent, pursuant to the terms of the Policy, before entering into a settlement. The insured sued the insurer for breach of contract and bad faith. The insurer filed a motion to dismiss both claims.

The Court dismissed the breach of contract claim after finding that the Policy unambiguously required the insured, if it wanted to make a claim and procure settlement reimbursement, to obtain consent from the insurer before it voluntarily made a settlement payment. Because the insured breached the Policy when it failed to obtain consent to voluntarily pay a settlement, the insured could not insist on the insurer's performance. The Court further found that the "no-action clause" of the Policy expressly precluded any right to sue the insurer unless the insured complied with all terms of the Policy.

The Court rejected the insured's argument that the settlement saved money in the whole scope of the claim such that reimbursing settlement funds to the insured would not prejudice the insurer. The Court found that the insurer was prejudiced as a matter of law because the insured's conduct did not afford the insurer an opportunity to evaluate coverage, liability, exposure, and damages, or participate in negotiations. Accordingly, the Court found that the insured's breach of contract claim failed as a matter of law.

With respect to bad faith, the insured argued that the insurer's "cursory dismissal" of the claim was insufficient to satisfy obligations to investigate the claim in good faith. The Court disagreed. The Court noted that the facts pertaining to prejudice and voluntary payment were not in dispute, and the Court concluded that the insurer had a reasonable basis to deny coverage for payment of the settlement because the insured failed to provide notice of the claim or seek consent for the settlement before entering into it.

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