

Insurance carrier sued for bad faith failure to defend - \$6,000,000

INSURANCE

Bad Faith & Coverage

SAN DIEGO COUNTY SUPERIOR COURT

Confidential v. Confidential, Docket number: Confidential, El Cajon. Judge: Not reported. Trial type: Settlement. Settlement date: September 2011.

SETTLEMENT: \$6,000,000

The settlement was reached at Mediation with Robert Kaplan, Esq. of Judicate West.

COUNSEL

Plaintiff: Craig A. Miller, Levine & Miller, San Diego.
Defendant: Confidential

FACTS/CONTENTIONS:

According to plaintiff: This was an action for insurance bad faith based on defendant Insurance Company's wrongful withdrawal of its defense and refusal to settle, a civil lawsuit against plaintiff. In the civil lawsuit, plaintiff was charged with negligently hiring and inadequately supervising her husband, who was accused of molesting children at the family's daycare facility. Plaintiff was neither accused, nor charged with, participating in the alleged molestation. Rather, her potential civil liability was based upon her alleged independent failure to recognize and stop her husband's alleged wrongdoing.

Defendant initially agreed to defend plaintiff in the civil lawsuit. However, it later abandoned the defense and rejected a \$100,000 policy limits demand because plaintiff's husband had been convicted on charges of molestation at the trial court level. When defendant withdrew the defense, the conviction was on appeal. (The conviction was later reversed and the charges dismissed.) Lacking the funds to defend herself, plaintiff suffered a verdict of \$2,806,000.

Plaintiff alleged that the policy exclusions barring coverage for claims arising out of any dishonest, fraudulent, criminal, or malicious act and claims for loss arising out of the willful violation of a penal statute or ordinance committed by, or with the knowledge of, any insured directly conflicted with the more precise language of the Endorsement, which specifically added coverage for (1) losses arising out of willful criminal acts such as child molestation; and (2) deleted the exclusion for any claim or loss arising out of an allegation that any insured was liable for, intentionally or unintentionally, hiring, employing, supervising, failing to supervise, or failing to prevent any other person who engaged in child abuse.

The policy application asked plaintiff whether, in the past five years, she was aware of any claims or incidents that might result in a claim. Although plaintiff's husband was involved in an incident that predated the application, the incident took place more than five years before she completed the application.

Defendant withdrew its defense on the grounds that the policy excluded coverage for the criminal acts of any insured. During the pendency of this suit, defendant also asserted that plaintiff made material misrepresentations on her application for insurance and that the policy was therefore void ab initio.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to plaintiff: \$2,806,000.

SETTLEMENT DISCUSSIONS

Not reported.