Update from CAOC
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Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
April 2022

Another attempt to modify the policy-limit-demand structure

INSURANCE INDUSTRY WANTS TO CHANGE RULES FOR TIME-LIMITED DEMANDS; WANTS MORE TIME TO INVESTIGATE AND A LAUNDRY-LIST OF SUPPORTING DOCUMENTS

The 2022 legislative session is in full swing, and your CAOC advocates have reviewed and sorted through the 2,132 bills that have been introduced since January 1. We review these bills for pro-consumer issues, immunities, liability protections, and anything that could be helpful or harmful to your practice. The deadline for introducing bills was February 18, and bills will continue to change form as they are amended throughout the session.

While there are many bills CAOC opposes and seeks to kill as harmful to consumers, one bill in particular warrants attention. Senate Bill 1155, authored by Sen. Anna Caballero (D-Merced) and sponsored by the Personal Insurance Federation of California, seeks to make statutory reforms to policy-limit demands. The corporate front group Civil Justice Association of California (CJAC), the same group spearheading the contingency fee initiative, introduced a similar bill in 2018 seeking to add a laundry list of requirements to policy-limit demands. SB 1155 is the latest attempt to revise the policy-limit-demand structure in California.

Background – Policy-limit demands and bad-faith actions

Policyholders retain a contractual right that applies to all parties to any contract – the duty of good faith and fair dealing. The duty of good faith and fair dealing requires a third-party liability insurer to settle a lawsuit against its insured when there is a clear and unequivocal offer to settle within policy limits, liability is reasonably clear, and there is a likelihood of a recovery in excess of the policy limits.

When a policyholder's acts cause harm to a third party, the policy holder is sued, not the insurer. The insurer owes the policyholder a duty to defend the lawsuit and a duty to indemnify the policyholder up to the policy limits for any judgment that may result from the lawsuit. *If the insurer acts in "bad faith" and refuses to settle a lawsuit for an amount that is covered by the policy limits, and there is a later judgment against the policyholder for an amount over the policy limit, the insurer can be held responsible to pay that judgment, even though it is more than the insurance policy limits.*

The insurance industry has argued that for bad-faith actions, in addition to establishing the reasonableness of the settlement demand, an insured also needed to prove that the failure to settle was as a result of *unreasonable conduct* on the part of the insurer. In 2016, the CACI committee acknowledged the debate about whether there should be an additional element in CACI 2334 of unreasonable conduct on the part of the insurer, but it declined to modify the instruction until there was a more definitive resolution from the courts. The Court of Appeal addressed this issue recently in *Pinto v. Farmers*, where the court found that "[a] claim for bad faith based on the wrongful refusal to settle thus requires proof the insurer unreasonably failed to accept an offer." (61 Cal.App.5th 676 (2021); SB 1155 (Caballero).)

The insurers sponsoring the bill claim that time-limited demands or policy-limit demands have "become a litigation tactic to pressure an insurance company to settle without allowing sufficient time to fully investigate a claim and to set up the insurer for a bad faith lawsuit." To summarize, SB 1155 seeks to enact the following requirements on policy-limit demands: Demands must stay open for 45 days, and must include (1) the amount of monetary payment demanded, (2) an offer of complete release, (3) the date and location of the loss, (4) the claim number, if known, (5) a description of all known injuries, and (6) all relevant proof, including (a) a list of the names and addresses of health care providers treating or evaluating the claimant or decedent for injuries suffered from the date of injury until the date of the time-limited demand, (b) all pertinent medical bills, reports, and records documenting the alleged injuries and treatment received, (c) loss of earnings documentation, and (d) medical and other relevant liens.

CAOC opposed the prior attempt at reform, AB 2429, a 2018 bill sponsored by the Civil Justice Association of California, supported by the insurers, and authored by then-Assemblymember Caballero. The bill died in the Assembly Judiciary Committee without a hearing. Ordinarily, CAOC would pursue a similar all-out oppose strategy as we did in 2018; however, this year we must be thoughtful and strategic.

CAOC's number one priority in 2022 is auto insurance reform. We introduced SB 1107 (Dodd) to increase California's minimum financial responsibility limits from $15,000 per person, $30,000 per accident, and $5,000 for property damage to $30,000/$60,000/$25,000 and eliminate the statutory offset for UIM coverage. Our counter-asks of auto insurance reform and policy-limit demands create a unique opportunity for negotiation and compromise. CAOC is working with our membership and insurance reform subcommittees as we carefully navigate through these issues this session.