How To Handle Multiple Claimants and Insufficient Policy Limits Scenarios?

When multiple lawsuits are filed and policy limits will be insufficient to settle all the claims or pay for all potential judgments, unique questions arise.

By **Greg Delfiner** | August 30, 2022

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There is a distinct possibility that an insurer will be faced with a claim involving multiple claimants and insufficient policy limits, requiring it to determine how to handle the matter properly and efficiently. For instance, a bus owned by an insured transportation company is involved in an accident resulting in the death of several passengers and injuring many others, with the insured being clearly liable. Multiple lawsuits are filed, and the policy limits will be insufficient to settle all the claims or pay for all potential judgments. This scenario presents unique questions.

While courts generally hold that insurers must act reasonably and in good faith when deciding to settle claims, how to best handle the above scenario largely depends on the facts of the case, and the law in a particular jurisdiction that applies to the policy, as different courts favor distinct approaches including 1) settling the claims by *pro rating* the policy limits based on several factors, including the severity of the injuries sustained/damages; 2) following the "First to Judgment Rule" (the first claimant to receive a judgment is entitled to be paid); 3) settling as many claims as possible (regardless of the severity of the injuries); 4) settling as many of the high exposure claims first; and 5) settling the claims based on when they are submitted (first in, first paid).

Regardless of the approach, certain actions may be considered when handling such claims to minimize the risk of alleged bad faith. These include: 1) reviewing the policy language governing the insurer's duty to defend and right to settle; 2) evaluating which state's law applies, as the proper methodology may depend on the applicable law; 3) investigating all of the claims and documenting your efforts; 4) placing the insured on notice that there may be insufficient limits to cover the claims, and that the insured may wish to retain independent counsel to protect its interest; 5) keeping the insured informed about the specifics of the claims and related offers/demands; 6) notifying all claimants of the situation and attempting a global settlement of all claims within the policy's limits (with a release for the insured); 7) providing the insured with an opportunity to assist with funding any reasonable settlements considering the available limits; 8) minimizing or eliminating possible excess judgments against the insured by way of reasoned settlements; and 9) considering court intervention by interpleading the policy limits, where permissible.

Again, how to best handle such a situation will depend on the particular facts and what state's law applies. For instance, New York courts have issued several helpful opinions: "Under New York law, an insurer 'has no duty to pay out claims ratably and/or consolidate them,' so long as it does not act in bad faith." *In re September 11 Property Damage Litigation*, 650 F.3d 145, 153 (2d Cir. 2011) (citation omitted). Insurers have the "discretion to settle when and with whom" they choose, provided that they do not act in bad faith and, thus, they may "settle with less than all claimants under a particular policy even if such settlement exhausts the policy proceeds." *Id.* at 151-53 (citations omitted).

Further, in New York, an insurer has the discretion "to settle one or more claims against it even if doing so may jeopardize the ability of later recovering or settling plaintiffs to collect on their claims, so long as the insurer does so in good faith and there are no statutory prohibitions against such settlements." *In re September 11 Litigation*, 723 F.Supp.2d 534, 542 (S.D.N.Y. 2010)). Likewise, the right to settle with fewer than all claimants, even when the settlement exhausts the policy limits, is especially defensible when "there is a bona fide issue as to whether the disfavored claim is covered under the policy." *SVT Group, Inc. v. Am. Cont'l Props., Inc.*, 650 N.Y.S.2d 204, 205 (N.Y. App. Div. 1996). In that regard, New York courts have found that when an insurer in good faith settles only certain claims, "[s]uch settlements are not 'voluntary' or 'additional insurance, but rather 'reduc[e] the liability remaining under the policy.'" *In re September 11 Property Damage Litigation* at 153 (citation omitted).

Other jurisdictions utilize different approaches. For example, "Florida law provides that where multiple claims arise out of one accident the liability insurer may exercise its discretion in how it elects to settle claims, 'and may even choose to settle certain claims to the exclusion of others, provided [that] this decision is reasonable and in keeping with its duty of good faith.'" *Gen. Sec. Nat. Ins. Co. v.* Marsh, 303 F.Supp.2d 1321. 1325 (M.D. Fla. 2004) (citing *Farinas v. Florida Farm Bureau General Ins. Co.*, 850 So.2d 555, 560 (Fla. Dist. Ct. App. 4th Dist. 2003)). "In order to satisfy these requirements, the insurer must: (1) fully investigate all claims … [at hand to determine how to best limit the insured's liability]; (2) seek to settle as many claims as possible within the policy limit; (3) minimize the magnitude of possible excess judgments against the insured by reasoned claim settlement; and (4) keep the insured informed of the claim resolution process." *Id.* (citations omitted). In doing so, an "insurer has the discretion to pursue a global tender, bound only by obligations of reasonableness and good faith." *Houston v. Progressive Am. Ins. Co.*, 2014 WL 12576820 at *7 (M.D. Fla. May 19, 2014) (citations omitted). Further, in multiple claimants' situations '"where liability is clear,

and injuries so serious that a judgment in excess of the policy limits is likely, an insurer has an affirmative duty to initiate settlement negotiations.'" *Aldana v. Progressive Am. Ins. Co.*, 828 Fed.Appx. 663, 669 (11th Cir. 2020) (citation omitted).

Accordingly, New York courts have affirmed the "first in time, first in right" principle regardless of whether the priority is by way of judgment or settlement. On the other hand, Florida courts have adopted an approach that requires insurers to settle as many claims as possible within the available limits (in conjunction with following certain procedures), while also providing insurers with discretion to choose to settle certain claims to the exclusion of others as long as their actions are reasonable and undertaken in good faith. The differences between these two jurisdictions reflect the importance of undertaking a thorough analysis of the applicable state's law before handling multiple claimants insufficient policy limits matter.

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These views are the author's own.
