

MONDAY, OCTOBER 14, 2019

LETTER TO THE EDITOR

Insurer wasn't set up by claimants or lawyers

As the plaintiff attorney in *Madrigal v. Allstate Indemnity Co.* (not the one who drafted the policy limits demand to Allstate), I am compelled to rebut the implied claim in the Oct. 7 guest column, “Conditional settlement demands: defusing third-parties’ tactics,” that somehow a multi-billion dollar Allstate Insurance was the victim or was set up in what was actually a classic (but tragic) insurance bad faith action and claim.

First, “the duty to settle is imposed in law to protect the insured from ... the insurer’s gamble — on which only the insured might lose.” *Murphy v. Allstate Ins. Co.*, 17 Cal. 3d 937, 941 (1976). So, insurer’s like Allstate that breach that duty “by unreasonably refusing to accept a settlement offer within policy limits may be held liable for the full amount of the judgment against the insured in excess of its policy limits.”

Kransco v. American Empire Surplus Lines Ins. Co., 23 Cal. 4th 390, 401 (2000).

In *Madrigal*, an Allstate insured with a \$100,000 insurance policy collides with a motorcyclist who is rendered a paraplegic. Allstate knew that the only eyewitness to the incident faults the Allstate insured. The Allstate insured is unsophisticated, does not speak or write English, has no real assets and would be financially decimated by what would be (and was) an eight-figure judgment against him. The motorcyclist’s attorney offers to Allstate to settle for policy limits with standard conditions, including proof of no other insurance, not in the course and scope of employment, and an asset sheet of all assets or lack thereof. While Allstate initially agreed to pay the policy limits, it reneged before compliance with those conditions. Shockingly, Allstate

formally rejected the policy limits offer because it engaged in a classic insurance company low ball tactic — valuing the case involving a known paraplegic at and counter offering with \$34,000!

The claim that Allstate was somehow “set up” was later manufactured by Allstate (with none of the similar arguments raised in the column documented in the claim file). The jury rejected Allstate’s bogus claims and to the extent they are reframed via the guest column, Daily Journal readers should, too.

The silver lining is that *Madrigal*, a paraplegic who would have been otherwise limited to \$100,000, ultimately recovered \$14.4 million from Allstate because Allstate was held legally accountable for its gamble and betrayal of its insured. ■

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