

When And How To Accept That Offer: Court of Appeal Rules That Bad Faith Insurance Lawsuit May Be Pursued Against Insurer That Did Not Timely and Fully Accept a Policy Limits Demand

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

In California, when an insurer fails to settle a claim within the policy limits, that may subject the insurance carrier to a bad faith claim to its policy holder. See, PPG Industries, Inc. v. Transamerica Ins. Co. (1999) 20 Cal.4th 310, 312. This is particularly an acute situation where, in the context of an automobile insurance policy, the policy limit may be far less than compensable damages.

In a matter involving staggering numbers, Hedayati v Interinsurance Exchange for the Automobile Club (2021) Westlaw 3524034 ("Hedayati"), an insurer was faced with just those facts. In the underlying matter, Maryam Hedayati, a 43-year-old woman who had recently graduated from medical school, suffered catastrophic injuries when, outside to take a break from studying for medical board examinations, an automobile driven by an insured of the Interinsurance Exchange for the Automobile Club drove into her at a cross walk, resulting in a severed leg, the shattering of another leg, and causing Hedayati to go into a coma.

The driver insured was 25 years old, unemployed, and living with his parents. The driver insured immediately consented to paying policy limits (after timely reporting the claim), and also advised the insurer that he had no assets, no job, and no other insurance.

The insurer, through an adjuster, offered the policy limit of \$25,000 within a month of the accident. Counsel for Hedayati rejected the offer but served a policy limits demand which also included a requirement that the insurer provide evidence that there was no other insurance, a declaration that the insured was not driving in the course and scope of any employment and a declaration as to the insured's assets being less than \$200,000, among other things. Hedayati's lawyer's demand letter gave seven (7) days to accept, which included the Thanksgiving Holiday. For reasons not known, the insurer did not comply with the time limit provided by Hedayati's counsel, and also did not provide written proof of the insurance policy (and/or that there was no other insurance available) within the deadline.

Hedayati went on to sue the driver insured of the Automobile Club, and obtained a \$26 million judgment. Hedayati then obtained an assignment from the insured driver and pursued the Automobile Club for bad faith. The Automobile Club filed for Summary Judgment, arguing that the Automobile Club had substantially complied with the demands of Hedayati's counsel, and had offered the policy limit within a reasonable timeframe. The

Trial Court granted Summary Judgment but, on appeal, the Court of Appeal ruled that a triable issue of fact existed, given that the insurer, which had policyholder consent to provide the policy limits, had not timely complied with the demand of Hedayati to not only offer the insurance policy limits, but evidence of those limits.

The Hedayati case is important in that it demonstrates that an insurance carrier which has offered policy limits may still have bad faith liability if it fails to provide other documentation such as evidence of assets or other insurance, even if a short time frame is given to the insurer.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at .

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504.

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.