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Cooperation Clause: Can My Insurance Company Force Me To Settle?

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Clients are usually surprised to learn that their commercial general liability insurance policy contains a “cooperation clause” that requires them to cooperate with their insurance company. Many are unhappy with the idea that they must cooperate with an insurance company that has sent them a reservation of rights letter describing multiple reasons why no coverage is owed for the lawsuit filed against them, despite large premiums they have dutifully paid for years.

This cooperation clause requires, as a condition to coverage, that the policyholder must “cooperate with [the insurance company] in the investigation or settlement of the claim or defense against the [lawsuit].”

When a lawsuit arises, the insurance company often needs its policyholder’s help in defending against the claim asserted by the plaintiff. It needs information from the policyholder about the occurrence on which the lawsuit is based. Without the policyholder’s cooperation, the insurance company may not be able to present the best defense to the plaintiff’s lawsuit. That seems simple enough.

But what if the policyholder has an independent claim against a third party who in turn sued him? What does “cooperate . . . in the settlement of the claim” involve in that situation, and what does it require?

That question came before the U.S. Court of Appeals for the Fifth Circuit

recently in *Mid-Continent Casualty Company v. Petroleum Solutions Incorporated*.

PSI was hired by Bill Head Enterprises to install an underground storage tank system. A few years later, the system leaked and caused environmental contamination damage. Head sued PSI for its negligent installation of the tanks. PSI sued Titeflex, a component manufacturer of the tank system. Titeflex also sued PSI. When Titeflex offered to settle its claim against PSI in return for PSI dismissing its claim against Titeflex, PSI's insurance company, Mid-Continent, urged PSI to dismiss its claim and settle with Titeflex. PSI refused, there was no settlement and the case went to trial.

Titeflex won at trial. Mid-Continent refused to pay the judgment against PSI, claiming PSI had breached its policy by refusing to settle the case when it could have done so by dismissing its claim. Mid-Continent argued that PSI was required by the cooperation clause to dismiss its claim against Titeflex, in return for Titeflex's offer to settle its claims against PSI.

The Fifth Circuit called Mid-Continent's claim that it owed PSI no coverage because of its breach of the cooperation clause "novel and dubious." It also said that "the direction of the law in this area is against such a conclusion." And it held that the cooperation clause does not apply to the circumstance of an insurance company requiring an insured to give up its right against a third party.

The cooperation clause is designed to assist the insurer in defending against the claim brought against its policyholder—not to allow the insurance company to bargain with the policyholder's rights against others. In the same way, an insurance company cannot use the cooperation clause to force a policyholder to assist it in litigation challenging whether there is coverage for the claim.

When insurance companies try to use the cooperation clause for purposes other than its intended purpose, policyholders are not required to cooperate.