



COMMONWEALTH AUTOMOBILE REINSURERS

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RECORDS OF MEETING

CLAIMS ADVISORY EXCESS JUDGEMENT SUBCOMMITTEE

A meeting of the Claims Advisory Excess Judgement Subcommittee was held at the offices of Commonwealth Automobile Reinsurers, 100 Summer Street, Boston on

TUESDAY, MAY 7, 2002 AT 10:00 A.M.

Members present -

Mr. Robert J. Kerton – Chairman
Safety Insurance Company

Mr. Francis N. Delage
Mr. Robert M. Puopolo
Mr. Edward M. Thompson

The Hanover Insurance Company
Amica Mutual Insurance Company
Arbella Mutual Insurance Company

Commonwealth Automobile Reinsurers present -

Mr. Joseph J. Maher Jr.
Ms. Valerie B. Gedziun
Mr. Robert W. Bell
Ms. Suzanne M. Riddle

Vice President, General Counsel & Secretary
Vice President, Claims
Senior Claims Manager
Claims Analyst

Also present –

Thomas M. Neville, Esquire

Segalini & Neville

Claims Advisory Excess Judgement Subcommittee Chairman Mr. Robert Kerton called the meeting to order at 10:04 A.M.

CAEJ

02.02 Claims Advisory Excess Judgement Subcommittee

Mr. Kerton opened the meeting by stating that the subcommittee is to consider the request of Allstate Insurance Company for reimbursement under CAR Rules of Operation Rule 10, E, 1, Claim Practices – Excess Judgements in the case of Davis vs. Allstate. He asked Attorney Thomas Neville representing Allstate Insurance Co. to address the subcommittee.

Attorney Neville distributed a hearing memorandum outlining Allstate's position. He stated the accident occurred on March 11, 1982 and that 20 years later the case is still in litigation. The plaintiff, Rufus Davis, was struck by a vehicle while he was crossing Route 1A in Revere after leaving the Wonderland Race Track. The vehicle, driven by Robert Allard, was owned by Edward Poulin and insured by Allstate with a policy limit of 25/50. The plaintiff suffered two fractured legs and damage to his spleen. Suit was filed against Wonderland, the City of Revere, Trolley's Food and Spirits, and Edward Poulin in 1984. Prior to 1990 Allstate had offered their policy limit of \$25,000 in exchange for a release of Poulin. This offer was rejected. In October 1990, a jury returned a verdict against Poulin and Wonderland. The verdict was for \$224,952 and with interest exceeded \$400,000.

Both Allstate and Wonderland appealed the verdict. In 1995 the Superior Court reversed the verdict against Wonderland and affirmed the judgement against Poulin leaving the Allstate insured responsible for the entire judgement.

In July 1995 the plaintiff demanded that Allstate pay its \$25,000 policy limit plus post judgement interest. There is no documentation in the file that Allstate ever responded to that demand. In February 1996 the plaintiff sent a 93A demand for the policy limit plus interest. Following this, Allstate sent a check for \$25,000 marked full and final settlement which was not negotiated. The plaintiff then filed a declaratory action against Allstate seeking post judgement interest and 93A damages. On July 1, 1996 Allstate sent a \$25,000 check without the release language which was accepted.

On May 18, 2001 the Supreme Judicial Court found that Allstate was responsible for the post judgement interest until it paid its policy limits in July 1996. They remanded the 93A action to the Superior Court. In order to stop the running of pre-judgement interest, Allstate paid \$435,767.72 on June 1, 2001.

In conclusion, Attorney Neville stated that it was Allstate's belief that since they had offered the policy limit prior to trial they would not be responsible for post judgement interest, even though they appealed in order to protect the interests of their insured. The issue of post judgement interest under these circumstances had not been decided by a Massachusetts court until now.

Mr. Kerton thanked Attorney Neville and asked the subcommittee members if they had questions for Attorney Neville. Mr. Delage asked if an excess letter had been sent to the insured. Attorney Neville replied that excess letters had been sent to the insured and operator when the suit was filed and that Mr. Poulin had personal counsel representing him. Mr. Delage then asked why there was no response to the

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02.02 Claims Advisory Excess Judgement Subcommittee (continued)

July 3, 1995 demand letter until after the demand of February 26, 1996 93A and what the status was of the 93A action. Attorney Neville said that there had been verbal discussions between the plaintiff's attorney and the adjuster Mr. Butler regarding settlement during that period. Unfortunately due to the age of the case the adjuster notes are not available and there is no one currently employed at Allstate that has firsthand knowledge of the claim handling. The 93A action is pending in Superior Court and is scheduled for trial on June 10, 2002. The demand is \$100,000 on the 93A case and no offers have been made. Mr. Delage asked Ms. Gedziun if Allstate could request reimbursement for a 93A judgement. Ms. Gedziun explained that under CAR Rules companies could request expenses for a successful defense of a 93A action but not recover a finding against it for bad faith.

Mr. Thompson asked whether there were discussions at Allstate regarding the likely success of an appeal following the judgement of \$273,817 in 1990. Attorney Neville said they joined in the appeal to protect the interests of their insured since the plaintiff would not release him. There were some liability issues as it was alleged that the Revere policeman hired by Wonderland had motioned traffic to proceed on Rt. 1A and that the plaintiff, who was intoxicated, stepped out into traffic. Mr. Puopolo wanted to know if there were attempts to settle in the intervening years. Attorney Neville said that unfortunately the file had been transferred to several Allstate offices and there is no record of any settlement negotiations. Ms. Gedziun stated that staff had requested full file documentation from Allstate and were told this was all that existed.

Mr. Puopolo asked Attorney Neville to explain, as he broke it down in his letter, the difference between post judgement and pre-judgement interest. Attorney Neville mentioned that in July 1996 the policy limit was paid. The post judgement interest that the court said they owed went from October 4, 1990, the date of the original verdict, until July 1, 1996. In June 1996 the declaratory judgment was filed. Pre-judgement interest ran on the declaratory judgement from June 1996 until payment was made on June 1, 2001.

The subcommittee members then discussed the case. Mr. Delage commented that the gap between the demand for payment and the offer to pay the policy limits was lengthy and came only after a 93A letter was sent. Mr. Thompson asked how companies would have handled the case and the appeal back in 1990. All agreed that there was little likelihood that the plaintiff would have settled for the policy limit even if it had been offered earlier. Mr. Puopolo posed the question would a prudent company have made an offer unconditionally and not pursued an appeal, leaving the insured with an excess judgement and no protection. Mr. Delage commented that there have been many legal decisions including Thaler which addressed insurers' defense obligations in the past few years but in 1990 his company would probably have required a release before paying the policy. The other members agreed that at that time the practice was to protect the insured and proceed with an appeal if the case could not be settled. Mr. Delage said it was a judgement call on the part of Allstate and while the judgement may have been questionable it did not rise to the level of negligence that is mentioned in Rule 10, E,1.

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02.02 Claims Advisory Excess Judgement Subcommittee (continued)

A motion was made by Mr. Delage and seconded by Mr. Thompson to recommend approving Allstate's request for reimbursement for \$435,441.28 based on the fact that while Allstate's judgement may be questionable it did not rise to the level of negligence that would preclude reimbursement under rule 10 E1.

The motion passed on a unanimous vote.

There being no further business, a motion was made by Mr. Delage and duly seconded by Mr. Thompson to adjourn the meeting.

The meeting adjourned at 11:10 a.m.

VALERIE B. GEDZIUN
Vice President, Claims

Boston, Massachusetts
May 8, 2002

Note: These Records have not been approved. They will be considered for approval at the next Claims Advisory Excess Judgement Subcommittee meeting.