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AIG Penalized for Bad Faith Practices

By Michael B. Geibel, Esq.

With facts shockingly reminiscent of egregious conduct criticized thirty years ago in *Betts v. Allstate Ins. Co.* (1984) 154 Cal.App.3d 688, a court in Massachusetts recently excoriated AIG Claims Services, Inc. for its bad faith handling of a personal injury lawsuit by finding that AIG hired defense counsel to fabricate a version of the accident that did not happen, improperly coached witnesses to support that version, suppressed recorded statements from the same witnesses which contradicted the version offered at trial, and then filed a meritless appeal. See, *Odin Anderson v. American International Group, Inc.*, Superior Court Civil Action No. 2003-01212-B. After a subsequent trial under Massachusetts statutes providing remedies for unfair and deceptive claims settlement practices, the court applied the maximum sanction of double damages.

Of particular interest to counsel having been exposed to a rather common negotiation tactic of AIG, footnote 17 of the *Odin* decision notes that AIG's representative at settlement conferences claimed that AIG "internal protocols" required that any cash settlement payment be delayed "by at least 90 days." Put on the stand, AIG's executive vice president admitted that AIG had no such internal protocol.

Unlike the Massachusetts statute, the California "Unfair Insurance Practices Act" set forth in *Insurance Code* § 790 et seq. does not provide for a direct action against an insurer after the decision in *Moradi-Shalal v. Fireman's Fund Ins. Cos.* (1988) 46 Cal.3d 287. However, in *Yanting Zhang v. Superior Court* (2013) 57 Cal.4th 364 the Supreme Court held that *Moradi-Shalal* does not preclude first party UCL actions ("Unfair Competition Law," *Bus. & Prof. Code* § 17200 et. seq.) that are based on grounds independent from section 790.03 of the Unfair Insurance Practices Act, even when the insurer's conduct also violates *Insurance Code* 790.03.

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