

CNA Pays \$2.1 Million Bad Faith Settlement To California Chiropractic Association

CCA ATTORNEY MICHAEL SCHROEDER SENDS A MESSAGE TO INSURANCE COMPANIES ABOUT DEALING WITH CHIROPRACTORS.

Editorial Staff

The California Chiropractic Association (CCA) purchased general liability insurance that was particularly designed to safeguard The CCA purchased \$3 million of liability insurance for a three-year period from MGIC Indemnity Corporation. The CCA based its decision to purchase this insurance in part on an endorsement by the American Society of Association Executives.

Three lawsuits were filed against the CCA by chiropractors who didn't agree with the results of the review, two of these reviews resulted in actions by the California state board. There were an additional two lawsuits filed by DCs for other reasons. When the CCA notified MGIC of the litigations, it was discovered that MGIC had assigned the policy to CNA Insurance Company, a subsidiary American Casualty, without ever notifying the CCA.

When CCA notified CNA, it was told that CNA would neither affirm or deny coverage. Thus, neither CNA or MGIC would agree to cover the litigations. The CCA was also told that neither company would pay expenses as they occurred. In addition, CNA cancelled the CCA policy prior to the completion of the term.

This left the CCA with the burden of carrying the costs of the lawsuits. Even though the CCA won all five cases, they were not able to be awarded legal fees. The lawsuits caused the CCA to have to divert funds from member services.

"A non-profit association, and all businesses, need to be able to depend on their insurer to cover them in their times of need." said Gary Cuneo, executive director of the CCA. "For our liability insurer, CNA, to turn its back on us when we most needed them was the epitome of bad faith."

The CCA had two other insurance policies that it hoped to rely on in this situation: a premises liability policy from U.S. Federal and Guarantee (USF&G) and the malpractice insurance policies of the individual peer reviewers provided by the National Chiropractic Mutual Insurance Company (NCMIC).

NCMIC and USF&G supported the CCA's efforts by agreeing to advance the legal fees necessary to sue CNA and MGIC with the agreement that the additional amount advanced would be reimbursed if the CCA won the lawsuits.

With MGIC's and CNA's failure to affirm coverage and their refusal to pay legal expenses after the fact, the CCA was left with only one alternative: On December 16, 1985, the CCA attorney Michael J. Schroeder, filed suit against both CNA and MGIC. CCA claimed that the two companies were guilty of bad faith, fraud, intentional misrepresentation, negligent misrepresentation, breach of statutory duties, and breach of fiduciary duties.

The pre-trial process was very long and difficult. The two insurance companies were very

uncooperative. This caused many motions to have to be filed and refiled. "For five years CNA made it difficult to obtain documents, filing delaying motions and generally tried to draw the case out until we would just quit", remarked Willard Smith, D.C., president of the CCA. "We didn't quit because we knew we were right and we refused to let this insurer get away with not honoring our policy."

In June of 1989, the court heard a motion for summary adjudication. The court was asked to rule on whether:

- the claims were covered by the policy;
- the claims were made in a timely manner; - that the CCA's defense cost should have been paid by the insurance company as incurred; and - that the failure to accept or reject the CCA's claim was a breach of the policy.

The judge ruled in favor of the CCA on all counts.

At this point, CNA decided they might want to settle, but at what cost? CNA's portion of the \$450,000 legal defense claim would have probably been no more than \$150,000 if the insurance companies involved had settled the claims as presented.

In July of 1990, CNA offered \$44,000 to settle. In September, they offered \$100,000. Then, one week prior to the date of the actual trial, CNA settled for the sum of \$2.1 million and an agreement to testify against MGIC.

The efforts of the CCA and their attorney Michael Schroeder paid off and then some. The support extended by NCMIC and USF&G was repaid. This left the CCA with the funds necessary to continue to pursue MGIC, who first wrote the policy, through the trial period in order to recover the CCA's remaining damages.

Reflecting on the recent victory against CNA, Attorney Schroeder remarked: "We are extremely pleased with the resolution of our lawsuit with CNA. This \$2.1 million settlement will send a message to insurance companies that they cannot continue to ignore the claims of their chiropractic insureds with impunity. Let there be no doubt that other such suits will be brought in the future on behalf of chiropractic doctors and their patients."

The MGIC trial is currently in progress and will continue for another few weeks. MGIC initially offered to settle for \$25,000. They have upped the ante to \$100,000. How much MGIC will ultimately pay is up to the jury to decide, but you can rest assured that this experience is one that neither MGIC nor CNA will soon forget.

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