



## **AN INTERPLEADER IS AN INSURER'S BEST OPTION WHEN FACED WITH MULTIPLE CLAIMS IN EXCESS OF THE LIABILITY POLICY LIMITS**

In 2010, the Arizona Court of Appeals recognized the “legal minefield” of bad faith claims that can plague insurers when faced with multiple claims that exceed the available liability policy limits. In *McReynolds v. Am. Commerce Ins. Co.*, 225 Ariz. 125, 235 P.3d 278 (App. 2010), the defendant was insured under a policy with liability limits of \$25,000. After a dispute arose between plaintiff’s counsel and the treating hospital over the satisfaction of a medical lien, plaintiff served an offer of judgement for the policy limits on the insurer. Instead of responding to the offer of judgment, however, the insurer promptly filed an interpleader action and paid the \$25,000 policy limits into the court. The Court of Appeals found that had the insurer accepted the offer of judgment, it would have “left the insurer and the insured exposed to a claim by the lienholder after having already paid out the available monies under the policy.” Because acceptance of the offer of judgment “would not have extinguished the liability of the insurer,” the Court found that the insurer did not act in bad faith when it filed the interpleader and continued to provide a defense for the insured.

In *McReynolds*, the Court recognized that there are three courses of action an insurer could take when faced with competing claims in excess of the liability policy limits. One option would be for the insurer to notify all potential claimants that the combined value of their claims exceeds the available policy limits and invite them or their attorneys to participate jointly in efforts to reach an agreement as to an equitable disposition of the available funds. Unfortunately, this option requires all claimants to reach an agreement on how the policy limits should be paid, and if no agreement is reached, the claimants may decide to forego settlement efforts by filing suit against their insured. Another option would be to attempt to settle all claims in the order in which they are presented. However, Arizona is not a “first come, first serve” state, and the insurer should not expose their insured to a claim in excess of the policy limits simply because another claimant presented their claim first. As such, it would be improper to pay claims as they are reported when there may be additional claims made against the insured in the future for the same incident. The third option would be for the insurer to promptly commence an interpleader action and pay its policy limits into the court while continuing to defend its insured. According to the Court, this is the preferred option:

We think the favored approach to managing multiple claims in excess of the policy limits must include some provision for certainty to insureds, insurers,

and litigants short of submitting each case to a jury. In that regard, as a matter of Arizona law, we hold that (1) the prompt, good faith filing of an interpleader as to all known claimants with (2) payment of the policy limits into the court and (3) the continued provision of a defense for the insured as to each pending claim, acts as a safe harbor for an insurer against a bad faith claim for failure to properly manage the policy limits (or give equal consideration to settlement offers) when multiple claimants are involved and the expected claims are in excess of the applicable policy limits.

While the Court's opinion did not go so far as to say that this is the only way to avoid a finding of bad faith, it did emphasize that the filing of an impleader acts as a "safe harbor" for the insurer when faced with multiple claims in excess of the policy limits. As such, if an insurer follows the holding in *McReynolds*, they would likely defeat any subsequent bad faith action brought by the insured with a motion for summary judgment. For example, in *Cornerstone Nat. Ins. Co. v. Itule*, No. CV-13-00292-PHX-GMS (D. Ariz. Sept. 30, 2014), an Arizona District Court Judge entered summary judgment in favor of the insurer because it complied with *McReynolds* by filing an interpleader action after it was unable to settle all claims within its policy limits, while continuing to defend its insured. The Court found that this course of action satisfied "the insurer's good faith duties to consider the insured's interests when evaluating settlement offers".

When faced with multiple claims in excess of the policy limits, the insurer may still attempt to resolve all claims at the same time through prompt, good faith settlement discussions with all potential claimants and their attorneys. Unfortunately, insurers often find themselves in situations where they are unable to resolve all claims at the same time because one or more claimants have not yet submitted a claim or responded to telephone calls and letters requesting an update on their claim. Passengers may be difficult to contact, and some potential claimants may not want to file a claim, but do not convey this information to the insurance company. Meanwhile, one claimant may have an attorney who is sending threatening letters demanding immediate payment of the policy limits and threatening a bad faith claim if their demands are not met. As set forth in *McReynolds*, an insurer can avoid any uncertainty by filing a complaint in interpleader which identifies all potential claimants as defendants, paying the policy limits to the court, and defending any lawsuit brought against their insured. The filing of an interpleader remains the preferred method for giving equal consideration to the interests of the insured while attempting to resolve multiple claims in excess of the policy limits.

Thomas Rubin & Kelley PC handles interpleader cases on a regular basis. Our goal is to contact all potential claimants and negotiate a pro rata settlement of all claims without having to incur the cost of filing a complaint in interpleader. However, if any of the claimants are unresponsive, or multiple lawsuits have been filed against the insured, the filing of an interpleader is the best option to protect the insurer from a future bad faith claim. Please contact Thomas Rubin & Kelley PC if you need assistance complying with *McReynolds*, or if you have any other questions on the handling of Arizona claims.