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Taking the judicial system more to the center of battle between the policyholder and the insurer

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Two recent court decisions, one by the highest court in Massachusetts and one by the highest court in New York, have put some needed teeth in the law of damages that accounts for insurance company delay, misfeasance and procrastination. Heretofore, all the insurance companies were liable for in cases where they wrongfully withheld policy benefits was interest on the loss of use of the money or just the usual damages prescribed under the policy.

In Rhodes v. AIG Domestic Claims, Inc., 461 Mass. 486, 961 N.E.2d 1067 (2012), an injured motorist after obtaining judgment in a personal injury accident that resulted in her becoming a parapalegic brought an action against the primary and excess insurers under the unfair claims settlement practice act for failure to effectuate a prompt, fair and equitable settlement of the tort claims. The legislature had amended the statute requiring damages for knowing or willful violations to be calculated by multiplying the amount of the underlying judgment. The award came up to $22 million.

Up to this point, the courts had merely doubled and trebled an amount calculated to be the interest on the loss of use of the money despite the clear mandate of the statute to multiply the amount of the judgment.

In Bi-Economy Market, Inc. v. Harleysville Insurance Company of New York, 10 N.Y.3d 187, 886 N.E.2d 127, 856 N.Y.S.2d 505 (2008), the insured sought consequential damages under its business interruption policy after the insurer improperly handled both the property and business interruption claims. Because of the failure of Harleysville to promptly and correctly process the claims, the policyholder was forced to go out of business. Since New York courts hardly recognize bad faith claims processing, the insureds asserted that it was entitled to consequential damages resulting from the collapse of the business resulting from Harleysville's failure to fulfill its obligations under the contract of insurance.

The Court of Appeals, New York's highest court, agreed with the policyholder holding that it is only necessary for the breaching party to see loss from the breach as "foreseeable and probable." Further, "The purpose served by business interruption coverage cannot be clearer - to ensure that Bi-Economy had the financial support necessary to sustain its business operation in the event disaster occurred."

Thus, the very purpose of business interruption coverage would have made Harleysville aware that if it breached its obligation under the contract to investigate in good faith and pay covered claims it would have to respond to damages to Bi-Economy for the loss of its business as a result of the breach.

The results in these cases should surprise nobody. In Rhodes, the Supreme Judicial Court based its judgment on a plain meaning of the amendment to the statute and in Bi-Economy, the New York

Court of Appeals affirmed long-standing principles of contract law. If anything was surprising it was the fact that eastern courts up to this point have been reluctant to impose harsh penalties on insurers for dilatory claims processing.
It is doubtful if these two cases taken together will turn claims processing around to be more responsive and forthcoming. The way the system is set up the field adjuster is hemmed in by a claims hierarchy that is all-the-willing to second guess and obfuscate. However, these two cases, especially in Massachusetts, provide powerful ammunition where litigation has to ensue and the unfair claim settlement practice act has been implicated. Further, they are taking the judicial system more to the center of the battle between the policyholder and the insurer.

Marvin Milton, SPPA, is the senior vice president at Swerling Milton Winnick, Public Insurance Adjusters, Inc., Wellesley Hills, Mass.