

California Offer to Compromise Law and Insurance Law Client Alert

Insurer's Pretrial Refusal to Disclose Policy Limits a Factor in Determining Reasonableness of Statutory Offer to Compromise

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California procedure awards certain costs to a plaintiff when a defendant fails to accept a statutory offer to compromise and the plaintiff obtains a better verdict. One factor that must be evaluated is whether the plaintiff's statutory offer was made in good faith.

Aguilar v. Gostischef (2013) ___ Cal.App.4th ___ (13 CDOS 11331) concerned a statutory offer to compromise made pursuant to California Code of Civil Procedure §998. The case arose out of an automobile accident in which Ed Aguilar was injured by the driver of another vehicle, Larry Gostischef. At the time of the accident, Mr. Gostischef held an automobile liability policy issued by Farmers Insurance Exchange. Prior to filing suit, Aguilar's counsel requested on several occasions that Farmers obtain permission from its insured to disclose the limits of the policy, at which point a policy limits demand would be made. Farmers ignored Aguilar's requests and suit was filed. A short time thereafter, Farmers offered its policy limit of \$100,000. Several months after that, Aguilar served a statutory offer to compromise in the sum of \$700,000. The statutory offer was not accepted. The case proceeded to jury trial and Aguilar was awarded a net verdict in excess of \$2,300,000 (after reduction for comparative negligence). Aguilar was awarded more than \$1,600,000 in costs pursuant to CCP §998. Farmers argued that the §998 offer was not made in good faith because it was greater than the limits of the policy and because Gostischef had no financial ability to pay the excess.

The Court of Appeal upheld the award of costs as a sanction for failure to accept a good faith statutory offer to compromise. Although the offer was in excess of the policy limits, the evidence showed that Aguilar had a good faith belief that Farmers had opened its policy limits by failure to settle before trial and that Farmers would have therefore been liable to pay the entire \$700,000 demand as damages for bad faith. Farmers' potential liability in that regard is the subject of another pending lawsuit.

The Court of Appeal upheld the award of costs reasoning that, "[r]egardless of whether Aguilar ultimately prevails in his lawsuit to recover the judgment against Farmers, Farmers fails to show it was unreasonable for Aguilar to believe Farmers may be liable for a judgment in excess of policy limits." Aguilar's pre-trial letter "may be interpreted as a genuine offer to settle; it was not necessarily a ploy to set up a bad faith case as Farmers argues. Whether it should be interpreted as genuine or as a ploy is beyond the scope of this appeal."

There are at least two lessons to be learned from the Court's holding. First, best practices dictate that insurers seek their insured's consent in disclosing policy limits in support of an attempt to settle in good faith prior to litigation. In addition, the *purported* bad faith of an insurer is relevant to evaluating the reasonableness of a statutory offer to compromise.



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