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# Bad faith conduct, managing agent decisions justify punitive damages

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When insurers act in bad faith, California law permits insureds to recover punitive damages if the insurer's conduct is egregious enough to constitute oppression, fraud, or malice. *See* Cal. Civ. Code Section 3294(a). Punitive damages are awarded "for the sake of example and by way of punishing" an insurer that acts in bad faith, *id.*, and awards of punitive damages can often well exceed the amounts that the insurer otherwise owes under the contract. *See, e.g.*, *Mazik v. GEICO Gen. Ins. Co.*, 35 Cal. App. 5th 455, 462-65 (2019) (affirming award of punitive damages totaling approximately three times amount of compensatory damages award); *Amerigraphics, Inc. v. Mercury Cas. Co.*, 182 Cal. App. 4th 1538, 1566 (2010) (punitive damage award equaling 3.8 times amount of compensatory damages).

Pursuant to the Civil Code, insurers can be liable for punitive damages if they are found to have "authorized or ratified the wrongful conduct" of their employees. *See* Cal. Civ. Code Section 3294(b). By statute, however, an insurer can only authorize or ratify such conduct through an officer, director, or "managing agent." *Id.*

Because most claims decisions are made by insurance adjusters and claims handlers, it is important for insureds to understand when such individuals can qualify as an insurer's "managing agent" for purposes of assessing punitive damages. In this regard, the California Supreme Court has stated that managing agents are individuals who "exercise substantial independent authority and judgment in their corporate decisionmaking so that their decisions ultimately determine corporate policy." *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 566-67 (1999). Thus, such individuals must "exercise[] substantial discretionary authority over significant aspects of a corporation's business." *Id.* at 577.

When it comes to insurers, a "managing agent" can come in a variety of forms. For one, even when not directly involved in the handling of an insured's

claim, a supervising adjuster may qualify as the insurer's "managing agent." Recently, in *Mazik*, the California Court of Appeal held that there was ample evidence to support a finding that an insurer's regional liability administrator was its "managing agent" for purposes of assessing an award of punitive damages. 35 Cal. App. 5th at 463-66. The court stressed that, although the regional liability administrator did not work on the insured's claim directly, he had responsibility for approving settlement offers to the insured. *Id.* at 465-66. The court also emphasized that the regional liability administrator had oversight responsibility of more than 100 claims adjusters in his region, had broad discretion over claims within his region and range of authority, and established the insurer's settlement standards for such claims. *Id.*

Furthermore, even lower-level adjusters and claims representatives can qualify as an insurer's "managing agent" in certain circumstances. Although insurers frequently argue that their adjusters and claims handlers are not "managerial" and do not set corporate policy, the California Supreme Court has made clear that "[t]he determination whether employees act in a managerial capacity ... does not necessarily hinge on their 'level' in the corporate hierarchy." *Egan v. Mut. of Omaha Ins. Co.*, 24 Cal. 3d 809, 822 (1979). "Rather, the critical inquiry is the degree of discretion the employees possess in making decisions that will ultimately determine corporate policy. When employees dispose of insureds' claims with little if any supervision, they possess sufficient discretion for the law to impute their actions concerning those claims to the corporation." *Id.* at 822-23; *see also id.* at 823 (An insurer "'should not be allowed to insulate itself from liability by giving an employee a nonmanagerial title and relegating to him crucial policy decisions.'"). Thus, if a lower-level adjuster or claims handler operates independently and makes final decisions on insureds' claims, then he or she rightly should be considered the insurer's "managing agent" for purposes of assessing punitive damages under California Civil Code Section 3294.

Finally, several courts have recognized that third party claims handlers and adjusters — i.e., individuals who are not directly employed by an insurer — can nonetheless qualify as the insurer's "managing agent." *See, e.g.*, *Major v. Western Home Ins. Co.*, 169 Cal. App. 4th 1197, 1220-21 (2009) (holding that substantial evidence supported jury's finding that third party claims adjuster was insurer's "managing agent," when adjuster exercised "substantial discretionary authority to pay or not pay benefits" and "made the decision to refuse to pay the benefits" owed to insureds on specious grounds); *Textron Fin. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 118 Cal. App. 4th 1061, 1080-81 (2004) (holding that third-party insurance agency was insurer's "managing agent," when agency participated in issuing policy to insured, advised insurer's claims adjuster to deny insured's claim, and participated in ultimate decision to deny claim). Accordingly, even when insurers outsource claims handling decisions to third parties, they nonetheless can be liable for punitive damages if those third parties engage in, authorize, or ratify bad faith conduct rising to the level of malice, oppression, or fraud.

Thus, when seeking punitive damages for an insurer's bad faith conduct, it is important for insureds to consider who might qualify as the insurer's "managing agent" for purposes of approving or ratifying bad faith conduct. Depending on the facts of the case, the insurer's "managing agent" might be the adjuster with direct responsibility for handling the claim, his or her supervisor(s), or even a third-party adjuster or administrator vested by the insurer with broad discretion and decision-making authority.