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The 2022 CLAY Awards
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Insurance companies can't look away when customers get sued, lawyers show by suing and settling over bad faith claim

CLASS ACTIONS

Perez v. Indian Harbor Insurance, Co.

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LINDA D. KORNFELD
PHOTO CREDIT: JUSTIN STEWART MARY

MARY CRAIG CALKINS AND DAVID A. THOMAS

An underwriter that fails to pay attention while its policyholder loses a multi-million-dollar case can't easily duck liability, Linda D. Kornfeld demonstrated by recouping $75.6 million from a reluctant insurer--who'd hoped to lowball its loss by citing a $1 million policy limit and claimed technicalities in the contract language.

Kornfeld, the co-chair of Blank Rome LLP's insurance recovery practice group, said the case illustrates what can happen when an insurer doesn't take seriously its duties to an insured customer.

The customer, a collection company called Rash Curtis & Associates, was covered by a policy with a $1 million limit from Indian Harbor Insurance Co. against Telephone Consumer Protection Act class actions. When those who got calls from Rash Curtis filed a TCPA claim, Indian Harbor paid little attention.

"Indian Harbor took a back-seat role in the litigation, even though the case wasn't going well for the defendant," Kornfeld said. "But the insurer had a duty to protect its insured." Published reports said Rash Curtis and Indian Harbor could have settled the matter in a mediation for $875,000. But the case went to trial and a jury awarded the class $267,000,000, based on statutory damages of $500 per call in violation of the TCPA. Indian Harbor declined to pay.

"Insurance companies have a duty to help their policyholders avoid large verdicts, and Indian Harbor failed to meet that duty," Kornfeld said. Relying on the $1 million policy limit got it no place—under California law an insurer that fails to settle and then faces an adverse verdict must pay the whole judgment. So Kornfeld, representing the class, sued for the money, citing breach of contract and bad faith. *Perez v. Indian Harbor Insurance Co. et al.*, 4:19-cv-07288 (N.D. Cal., filed Nov. 5, 2019).

She was joined by Blank Rome colleagues Mary Craig Calkins and David A. Thomas. Scott A. Bursor of Bursor & Fisher PA was the original class counsel; he obtained the verdict and brought in Kornfeld to help collect. "Burson did great and significant work on the case," Kornfeld said. "Our job was to shoot down Indian Harbor's asserted reasons for failing to pay up."

Kornfeld said that Indian Harbor brought on five insurance industry experts to explain how the insurer had assigned its duty to defend to the policyholder and therefore had no obligation to have anything to do with settlement talks or the conduct of the defense at trial.

"That's not how it works in the world," Kornfeld said. "You pay your premium to get your insurer's wisdom when lawsuits come along. Insurers have years of experience in these matters. If you give that up, it better be stated in flaming red lights in the policy, and it wasn't."

When Kornfeld confronted the experts, their claims began to fall apart, she said. "We deposed their bad faith expert and piece by piece, deconstructed their theory." When each side filed motions for summary judgment, "they could see it was a loser," she said of the defendant's case. Still claiming it was right, Indian Harbor paid $75.6 million to settle rather than go to trial.

"They didn't want to have to explain to a jury why they had their 'out to lunch' sign on the door," she said.

– JOHN ROEMER