

**LAWYERS RISK MANAGEMENT**
CAUTIONARY TALES

A Tangled Web

This litigation arose out of legal services provided by the insured law firm for various family members related to the victim of a fatal car accident. Ryan Klinton was operating a 2006 Cadillac when, temporarily blinded by the glare from the sun, he rear-ended a vehicle that was operated by Jessica Chremion. Ryan died as a result of the accident and his two passengers, Kevin and Aiden Klinton, sustained injuries. The insured firm was later retained to pursue a claim against GMC, as the manufacturer of Cadillac, for negligence based on defects in the vehicle that allegedly caused the accident, and to represent the Klintons in their claim for negligence against Chremion.

To prosecute the claim against GMC, the insured engaged another firm, The Vasquez Firm, to assist in its investigation; ultimately, both firms determined that there were no viable claims that could be made against the vehicle manufacturer. Notwithstanding, GMC agreed to settle with the Klintons for \$100,000 and AutoDirect Insurance Company, on behalf of Chremion, settled for \$50,000. Unbeknownst to the insured and other family members, the claimants, Aiden and Anne Klinton, directly and on their own behalf, pursued Ryan's automobile insurer and eventually settled for \$250,000.

One year later, the claimants sent a demand letter to the insured for its \$1 million policy limits asserting that the damages were well in excess of that figure given the \$5 million limits of the umbrella policy over Ryan's automobile policy and that there had been no erosion of the insured's policy limits. According to the claimants, the insured failed to consider pursuing a claim against Ryan's automobile carrier for his negligent operation of the vehicle and, as a result, they were precluded from doing so because the statute of limitations had expired during the insured's representation of the claimants. The claimants allege that had the insured done so, they would have discovered the existence of Ryan's umbrella/excess policy specifying \$5 million in limits.

The insured firm explained, however, that the claimants made the claim against Ryan's automobile carrier prior to the insured being retained to represent them and finalized the settlement soon after the insured was retained. The insured further advised that it did not receive any portion of the settlement as a payment for fees or costs, thereby supporting the insured's contention. The insured also asserted that it was retained solely to pursue a claim against GMC. However, pursuant to the terms of the insured's engagement letter, the insured was to explore all potential claims, which the claimant contended included a claim against Ryan's automobile carrier.

In the demand letter, the claimants also alleged that the insured had failed to address or obtain consent for a waiver of the potential conflict of interest in the insured's collective representation of all involved family members. The insured was adamant, however, that all members of the Klinton family agreed that the cause of the accident was negligence based on defects in the vehicle, not negligence on the part of Ryan. Given this consistent position, there did not seem to be any reason why the insured was unable to represent all of them on a joint basis. However, the absence of a conflict letter advising the Klintons of the potential for a conflict if their respective positions were to change was problematic.

After a response to the claimants' letter was transmitted rejecting the policy limits demand as premature, the claimants filed suit making essentially the same allegations as in the demand letter.

Initially, the potential for significant exposure seemed possible in view of the questionable liability of the insured since the underlying recovery could have included access to Ryan's umbrella policy, which would have amounted to a total possible recovery of \$5.25 million. However, the settlement agreement entered into by the claimants with Ryan's automobile insurer contained a release, which extinguished all of the claimants' claims against Ryan's primary and umbrella/excess insurers.

RESULTS

In view of the release executed by the claimants, without the insured's knowledge or consent, a motion for summary judgment was made on behalf of the insured, wherein it was argued that the release precluded any claims against the insured. The court granted the motion and dismissed the lawsuit in its entirety. The claimants subsequently appealed the court's decision and the appeal is pending.

TAKEAWAY

In the instant claim, the insured's engagement letter did not clearly articulate the scope of the insured's representation of the claimants. Had the letter been explicit, it would have been difficult, if not impossible for the claimants to assert any claim against the insured based on its alleged failure to pursue claims against GMC. Additionally, while the insured may have understood that the family members' position as to the cause of the accident was defective design/manufacturing of the vehicle, nonetheless, the insured should have advised all family members in writing as to the possibility of a conflict should anyone's position change.