

## *An Insurer's Duty to Settle When There Are Potential Joint Tortfeasors*

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BY WILLIAM T. BARKER

The substantive laws of all American jurisdictions impose an affirmative duty upon liability insurers to settle claims asserted against their insureds at or within the dollar limits of their policies in regard to a potentially-covered claim where such settlement is a necessary or appropriate means of protecting the insured from the prospect of liability in an amount in excess of the protection afforded by its insurance. Assessment of an insurer's obligations with respect to its fulfillment of this duty to settle can be complicated, however, under circumstances in which quantification of the insured's liability exposure is affected by the presence and involvement of one or more additional parties – joint tortfeasors – who potentially share in the insured's culpability to the claimant for the injury or damage giving rise to the claim.

After providing an overview as to the nature and underlying policy rationale for the duty to settle, this article examines a host of illustrative cases reflecting how this duty has been construed and applied in situations in which an insurer's obligations to its own insured have been complicated by the involvement of joint tortfeasors (and such joint tortfeasors' own insurers), thereby implicating various tort law rules concerning allocation of liability, possible rights of subrogation or contribution as between co-defendants, and the specter of bad faith exposure for insurers whose strategic judgments undertaken in this context may be subjected to second-guessing by courts long after the fact. Where possible, Practice Pointers for insurers and their coverage counsel confronted with such matters are provided.

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