

## INSURANCE LAW

### Bad Faith

On October 17, 2011 in *Taveras v. American Transit Insurance Company*, 2011 NY Slip Opinion 51831, a trial court in Brooklyn awarded bad faith damages of \$2,250,000 plus interest from April 14, 2006 against American Transit. Justice Schack of the Supreme Court, Kings County began his 60 page decision with colloquy between Jack Nicholson and Tom Cruise from the classic scene in *A Few Good Men*, concluding that American Transit refused not only to acknowledge the truth, but to handle it.

The court, citing *Pavia v. State Farm*, 82 NY2d 445 (1993) examined seven key factors discussed in court decisions throughout the years addressing insurer bad faith in New York and ultimately concluded that American Transit acted with gross disregard of its insureds' interests, engaging in a pattern of knowing and reckless disregard of the interests of its insureds by failing to settle the claims of Taveras either prior to trial or after the liability verdict.

The underlying action involved a three car motor vehicle accident. Plaintiff Taveras was a passenger in a taxi driven by the American Transit insured which struck the rear of a rental car. The cab was then struck by another vehicle, also insured by American Transit. Both American Transit policy limits were \$100,000.

The court found that American Transit could have settled the underlying action by tendering both \$100,000 policy limits prior to trial or after the jury rendered its liability verdict and failed to do so. The court noted that American Transit's insured was never informed by counsel assigned by American Transit of plaintiff's willingness to settle the action within the policy limits and that American Transit assigned the same adjustor to handle the claims of both American Transit insureds, despite the obvious conflict, thereby violating their own internal procedures. The verdict rendered in favor of Taveras was for \$9,263,376. The Appellate Division modified the judgment reducing it to \$2,500,000.

For further information or to obtain a copy of the decision, please feel free to e-mail me at [efitzpatrick@lewisjohs.com](mailto:efitzpatrick@lewisjohs.com).

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