

PROFESSIONAL LIABILITY UPDATE

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By Jennifer A. Becker

The Fourth District holds that an insured client cannot establish liability against its attorney for negotiating a settlement within policy limits when the policy gives the insurer absolute discretion to settle.

New Plumbing Contractors, Inc. v. Edwards, Sooy & Byron (2002) 99 Cal.App.4th 799

New Plumbing carried a comprehensive general liability policy issued by Nationwide Mutual Insurance Co. Under the policy, Nationwide was entitled to investigate any occurrence and settle any claim. Edwards, Sooy & Byron “Edwards” represented New Plumbing in the “Brown/Emery” matter. Just prior to settlement of the Brown/Emery matter, New Plumbing obtained different insurance at a substantially higher premium.

New Plumbing sued Edwards claiming that the settlement caused New Plumbing to pay higher premiums to weaker carriers for less coverage. New Plumbing alleged Edwards breached its duty because it failed to notify New Plumbing of the settlement negotiations, and failed to raise affirmative defenses on its behalf.

The trial court granted Edwards’ motion for summary judgment on the grounds that New Plumbing could not establish causation since Nationwide had the right to settle cases regardless of the merits.

The Court of Appeal affirmed, holding that a policy provision giving an insurer discretion to settle precludes liability against the insurer for any settlement within policy limits. By extension, the attorneys jointly representing the insurer and the insured are not liable for recommending or effecting a settlement within policy limits.

Comment: Attorneys in a tri-partite relationship between an insurer and an insured owe a duty to both parties. However, where an insurer is given unfettered discretion to settle, the attorney may do so even over the

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objection of the insured client without
incurring liability.

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