Policyholder Playbook Episode 9: Assess Whether the Parent Company of the Issuing Insurer Should Also Be Sued

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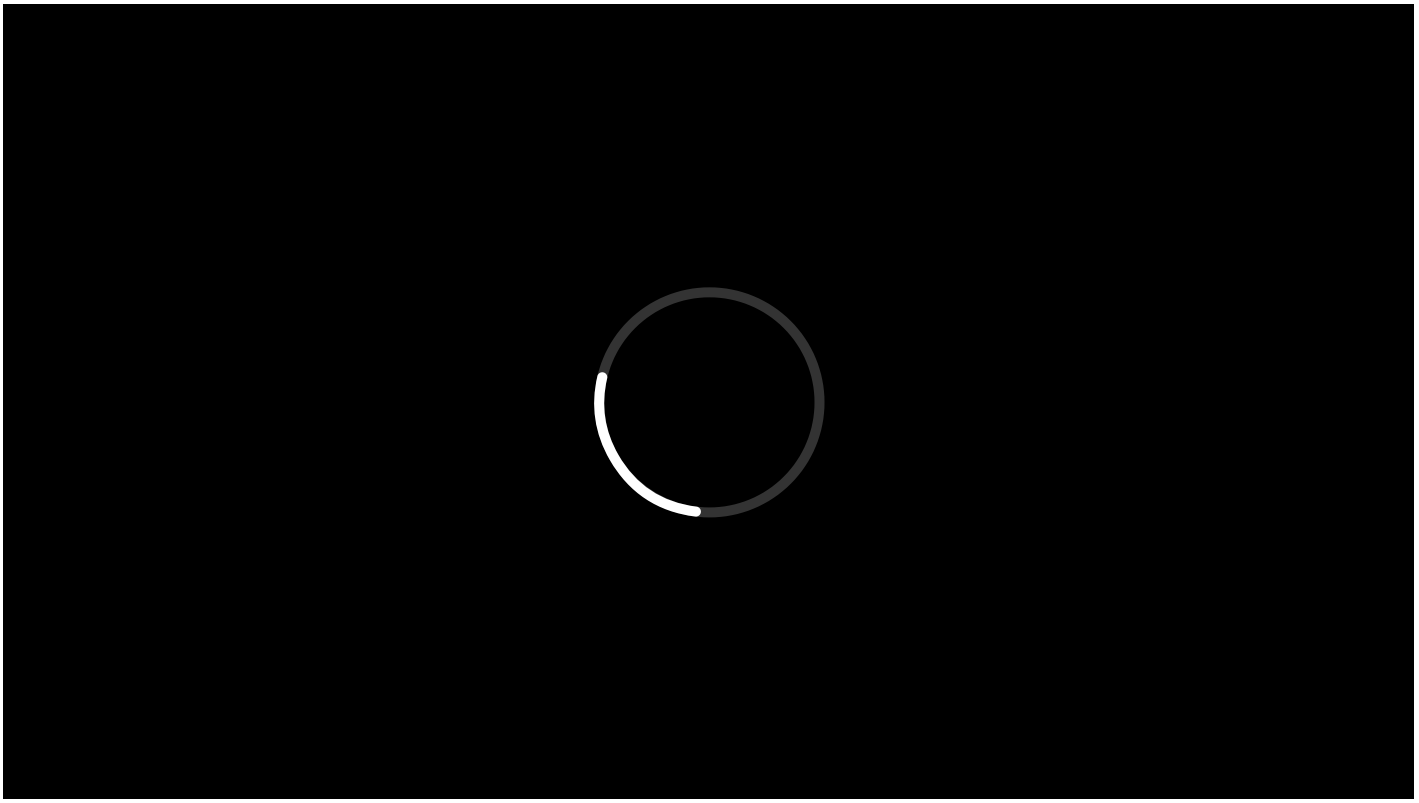
PRACTICES Insurance Recovery, Litigation



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A first step in insurance coverage litigation is identifying who to sue—the issuing insurer, the entity who you directly contracted with, is an obvious place to start. But what about the parent of the issuing insurer? The parent may be an interesting target in many scenarios, but one which arises with some frequency is when the parent, for whatever reason, was directly involved with the handling of the claim.

Before we get to the basis for suing the parent, you may be wondering, why sue the parent? With respect to situations where the parent is directly involved with the handling of the claim, four reasons come to mind. First, in cases that involve allegations of bad faith, to hold the parent accountable. Second, and again in cases that involve allegations of bad faith, to potentially increase your recovery—more bad faith actors may mean more bad faith damages, depending on which state's law applies. Third, discovery—it is far easier to secure discovery from a parent who is

a party, then a parent who is a third-party. Fourth, and perhaps most importantly, to incentivize settlement. When corporate separateness is at risk, insurers may come to the table.

We pursued this very strategy a few years ago in Oklahoma state court, in *Continental Resources v. Mid-Continent Casualty Company*. We moved for leave to add Great American—Mid-Continent's parent—to the case after discovering that Great American employees were on many claims-handling communications and seemed to be involved with key decision-making, and after realizing that Great American appeared to exercise significant control over Mid-Continent's affairs.

We advanced two theories. First, we cited case law from Oklahoma and other jurisdictions that stands for the proposition that a policyholder may assert a bad faith claim against a non-issuing entity when that entity is directly involved in the alleged bad faith conduct. We cited, among other cases, *Campbell v. AIG* from an Oklahoma appellate court, *Gatecliff v. Great Republic* from the Arizona Supreme Court, and *Delos v. Farmers Group* from a California appellate court.

Second, we argued that Mid-Continent was a mere instrumentality of Great American, as evidenced by, among other things, (1) Great American controlling Mid-Continent's board, (2) Great American paying the salaries of certain Mid-Continent employees, (3) Great American controlling Mid-Continent's billing process, and (4) Great American providing Mid-Continent with recommendations for coverage positions.

Upon those arguments, the Court granted our motion for leave to add Great American from the bench. We voluntarily dismissed our case a few months later, for reasons I will leave to your imagination.

Please message me if you'd like copies of the relevant briefing and the Court's order—you might find it interesting and it is not available on WestLaw or Lexis.

In closing, this play is simple: when identifying which parties to sue, consider the parent of the issuing insurer.