

INSURER MAY MEET ITS DUTY TO EQUALLY CONSIDER SETTLEMENT OFFERS, WHEN PRESENTED WITH MULTIPLE CLAIMS IN EXCESS OF POLICY LIMITS, BY PROMPTLY AND IN GOOD FAITH INTERPLEADING ITS POLICY LIMITS AND CONTINUING TO DEFEND THE INSURED

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McReynolds v. American Commerce Insurance Company (ACIC)

Ct. Appeals, Div. One, July 13, 2010

Authored by the [JSH Appellate Team](#)

McReynolds sustained severe injuries in an automobile accident. He was treated at Flagstaff Medical Center ("FMC"). FMC subsequently filed a lien for \$43,603.85. The at-fault driver was insured by ACIC for \$25,000. McReynolds demanded the \$25,000 policy limits. Aware that McReynolds' medical bills exceeded the policy limits, ACIC sent a check for \$25,000 payable to McReynolds and FMC, along with a release of all claims. McReynolds rejected the check, asserting the addition of FMC was a material change from the settlement offer.

McReynolds sued the ACIC insured on December 10, 2004 and served an offer of judgment for the policy limits via U.S. mail on January 6, 2005. ACIC sought advice from the counsel it hired to defend the insured as to whether it "needed to protect" the FMC lien on any settlement proceeds. Counsel indicated that if ACIC paid McReynolds without getting a release from FMC, it could be liable for the FMC lien. Counsel recommended taking steps to ensure the lien was satisfied. There was a dispute, however, between McReynolds' counsel and FMC as to the satisfaction of the lien. Thus, instead of responding to McReynolds' offer of judgment, ACIC filed an interpleader action and paid the policy limits into the court.

The underlying injury case went to trial. McReynolds prevailed and secured a judgment against the ACIC insured for \$469,110.17. The insured then assigned to McReynolds any claims she might have against ACIC in exchange for a covenant not to execute. McReynolds sued ACIC for failing to give equal consideration to the insured's interests by failing to accept the offer of judgment.

The court held that the insurer had a duty to properly manage the policy limits as part of the duty to equally consider settlement offers, and that the insurer satisfies this duty by promptly and in good faith interpleading its policy limits into court, naming all known claimants, and continuing to provide a defense to its insured. The court declined to adopt the "first in time, first in right" rule as applied to multiple claims to a single insurance policy when no factual basis existed upon which a meaningful temporal priority can be established. "Promptly" filing an interpleader in this case meant doing so within the time to respond to the Rule 68 offer of judgment.

The offer of judgment was made by mail on January 6, 2005. Because this was within 60 days of the service of the summons/complaint, it remained effective for 60 days under Rule 68(h). ACIC filed its interpleader five days after the expiration of 60 days from January 6, 2005. McReynolds argued this was therefore not "prompt." The court disagreed due to the application of the extra five days for mailing under Rules 6(a) and (e). If an offer of judgment is served by mail, the time to accept the offer will be extended by 5 calendar days and until the end of the next day which is not a Saturday, a Sunday or a legal holiday. This extended the offer in this case to March 14, 2005, therefore the interpleader was filed prior to the expiration of the offer of judgment.