



# Weekly Law Resume

A Newsletter published by Low, Ball & Lynch  
Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

Issue By: Ray Coates

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## Coverage - Genuine Dispute Doctrine - Third Party Actions

*James Howard v. American National Fire Insurance Company*  
Court of Appeal, First District (August 11, 2010)

The genuine dispute doctrine protects an insurer against a bad faith claim where there is a genuine dispute as to the insurer's liability. This case considered whether that principle applies to a third party action where an insurer refused to defend and settle.

James Howard sued Father Oliver O'Grady and the Roman Catholic Bishop of Stockton for sexual molestation that occurred over many years. In his complaint, James alleged that he was molested between 1979 and 1988. A jury found the Bishop liable for negligent retention and entered judgment in the amount of \$5.5 million, \$3 million of which was punitive damages. The Bishop had several comprehensive general liability policies from different insurers and excess insurers. American insured the Bishop from November 1, 1978 to November 1, 1979. The policy amount was \$500,000 per occurrence. American refused to defend on the basis that the molestation occurred after their policy expired. American relied on statements James made during his deposition that the abuse first began in 1984. American also refused to contribute toward any settlement.

While the case was on appeal, there was partial satisfaction of the judgment by the Bishop and some of the insurers. In exchange, the Bishop agreed to pursue any insurer who did not contribute. Following that settlement, Howard sued the Bishop insurers as a judgment creditor and the Bishop filed a separate complaint against the same insurers. The complaints were consolidated for trial. The claims against American proceeded to trial. The court found molestation occurred during American's policy period and that American acted in bad faith in refusing to defend, settle and indemnify the Bishop. American was ordered to pay almost \$3 million for damages it caused. American appealed.

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The Court of Appeal affirmed. It first found that there was proof that James was sexually molested during the American policy period. American argued the court could not consider evidence that was not presented in the personal injury action. The Court of Appeal rejected that argument and stated that the evidence in the underlying litigation did not dictate the scope of evidence in the coverage action.

The court found American breached its duty to defend the Bishop. American argued that there was no breach of the duty to defend because the insured was fully defended by other insurers. The court stated an insured refused a defense may be damaged even if the insured is defended by another carrier. Damages can be incurred apart from defense costs in the form of exposure to personal liability.

American also breached its duty to settle this case. The court stated that even though there was never a demand within the single policy limit, there were demands within the primary insurance policy limits of the multiple insurers on the risk. In that situation, each insurer's obligation was to cover the full extent of the insured's liability up to the policy limits. This was especially true where the settlement demand was less than the eventual judgment entered.

American argued there was no excess judgment. The court stated that was not necessary. An insured may recover for bad faith refusal to settle dispute the lack of an excess judgment where the insurer's misconduct goes beyond the simple failure to settle within policy limits or the insured suffers consequential damages apart from an excess judgment. Here, the Bishop paid money to help settle the case and incurred attorney's fees and accounting expenses.

American argued there was a good faith genuine dispute as to coverage in this matter and therefore there was no bad faith. The court stated that an insurer in a third party case could not rely on the genuine dispute doctrine in a refusal to settle the case. Finally, American acted in bad faith by refusing to indemnify the Bishop for the judgment.

The court found the damages properly awarded and that they contained no component of the punitive damage award. With slight modifications in the amount of damages awarded, the court affirmed the judgment.

## COMMENT

This case casts doubt on the use of the genuine dispute doctrine in any third party case involving a failure to settle. The court's decision is also instructive for its analysis of a failure to settle case involving multiple insurers.

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For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/A121569%20AND%20A123187](http://www.courtinfo.ca.gov/opinions/documents/A121569%20AND%20A123187)

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