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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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FIDELITY AND GUARANTY
INSURANCE COMPANY and SEDGWICK NO. CIV. S-06-752 WBS GGH
CLAIMS MANAGEMENT SERVICES,

Plaintiffs,

MEMORANDUM OF DECISION

v.

GRETCHEN REDDY,
Defendant.

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Plaintiffs Fidelity and Guaranty Insurance Company
("Fidelity") and Sedgwick Claims Management Services ("Sedgwick")
filed this action for declaratory relief regarding the proceeds
of an insurance policy. Plaintiffs request the court to declare
that their handling of defendant Gretchen Reddy's claim did not
breach the implied covenant of good faith and fair dealing and
that the policy covering the insured, Wendy Delos Santos, remains
at the policy limit of \$15,000 per person injured. After a two-

1 day bench trial, the court finds that plaintiffs breached the
2 implied covenant of good faith and fair dealing and will
3 therefore deny the declaratory relief requested. This memorandum
4 constitutes the court's findings of fact and conclusions of law
5 pursuant to Federal Rule of Civil Procedure 52(a).

6 I. Findings of Fact

7 The incident and injury giving rise to this dispute
8 occurred on September 22, 2003 when Delos Santos, a permissive
9 user of a car borrowed from Suburban Ford, was involved in an
10 accident with defendant in Sacramento, California. Because Delos
11 Santos did not have personal insurance at the time of the
12 accident, the only coverage she had was a policy that Fidelity
13 had issued to Suburban Ford. The policy covered permissive users
14 of Suburban Ford's cars with limits of \$15,000.00 per person and
15 \$30,000.00 per accident.

16 On October 1, 2003, defendant filed a claim with
17 Sedgwick, the claims handling company that processed Fidelity's
18 claims. (Def.'s Ex. A at 13-16.) Defendant's claim was assigned
19 to Janet Burrows, the Senior Claims Manager in Sedgwick's Ford
20 Daily Rentals department that handled claims for about twenty-six
21 states, including California. Thomas Adams, Burrows' Liability
22 Supervisor, was responsible for overseeing the claim. In
23 supervising Burrows and eleven other claims handlers, Adams
24 conducted reviews of the claim notes for each file on pre-
25 determined intervals. The depth of his review depended on the
26 particular claim, but always included a review of the most
27 current claim notes. Adams, whose office door opened to the
28 cubicles of the employees he supervised, also walked throughout

1 the office on a daily basis to confer with the employees.

2 When defendant filed her claim, Burrows had been
3 working for Sedgwick for about nine months. While Burrows had no
4 experience working for an insurance company prior to joining
5 Sedgwick, she had about eighteen years of legal experience. For
6 approximately eight years of those years, Burrows worked as a
7 paralegal in a plaintiffs' personal injury law firm and, among
8 other tasks, drafted motions for the litigation department.
9 Despite her lengthy legal experience, Burrows testified that,
10 before this lawsuit, she did not know that an insurer's bad faith
11 refusal to accept a reasonable settlement demand within policy
12 limits could render the insurer liable for a judgment against the
13 insured that exceeds the policy limits.¹

14 At the time Burrows was assigned defendant's claim, she
15 had never paid the policy limit on a California claim or set a
16 reserve at the policy limit. Of Burrows' approximately 180 to
17 190 active claims, only about sixty of her claims involved bodily
18 injury, only about thirty were based in California, and only
19 about ten had Suburban Ford as the primary insurer. Because the
20 reserve was set at the policy limit and Suburban Ford was the
21 primary insurer for defendant's claim, defendant's claim was one
22 of the most, if not the most, significant of the claims assigned
23

24 ¹ While Burrows did not work in California and had never
25 handled a California insurance claim before coming to Sedgwick,
26 her state of employment, Michigan, "held long ago that an insurer
27 is liable to its insured for a judgment exceeding policy limits
28 when the insurer, who has exclusive control of defending and
settling the suit, refuses to settle within policy limits in 'bad
faith.'" Commercial Union Ins. Co. v. Med. Protective Co., 426
Mich. 109, 116 (1986) (citing City of Wakefield v. Globe Indem.
Co., 246 Mich. 645, 648 (1929)).

1 to Borrows.

2 With respect to its employees' handling of claims,
3 Sedgwick's corporate standards at the time period relevant to
4 this case required employees to open all mail within twenty-four
5 hours, attach it to the file within three days, and respond to
6 any letters within ten days. The corporate standards also
7 mandated that employees give letters from attorneys special
8 attention. According to Adams, Sedgwick's employees received
9 "numerous training sessions" on these standards. To implement
10 its standards, Sedgwick's mail was initially opened and date-
11 stamped by a mail clerk and then distributed to each employee's
12 box along with any faxes. Burrows, who knew the corporate
13 standards for mail, checked her box several times per day and
14 "leafed through" her mail on the way back to her desk. Beginning
15 at least in August of 2004, however, Burrows failed to comply
16 with Sedgwick's corporate standards and made a "conscious
17 decision" to set mail in a stack on her desk and ignore it until
18 she found the time to address it.

19 When defendant submitted her claim to Sedgwick on
20 October 1, 2003, Burrows interviewed defendant via telephone and
21 determined that defendant was an anesthesiologist who had been
22 unable to return to work since the accident. (Def.'s Ex. A at
23 14-17.) During their conversation, defendant also provided
24 Burrows with the contact information of a witness and police
25 officer who had told defendant that Delos Santos was at fault.
26 (Id.) On November 5, 2003, defendant contacted Burrows to report
27 that she was continuing to incur medical bills and had not
28 returned to work. (Id. at 9.)

1 For the following two-and-a-half months, it appears
2 nothing was done on the claim until January 20, 2004 when Burrows
3 contacted defendant to obtain an update on her condition, opened
4 a personal injury claim for defendant, and sent a letter to
5 defendant requesting releases to allow Sedgwick to obtain her
6 medical records. (Id. at 44-48.) When Burrows opened the
7 personal injury claim, she had already determined that Suburban
8 Ford was the primary insurer and knew that defendant had not
9 returned to work since the accident. (Id.) At that time,
10 Burrows increased the reserve to the policy limit of \$15,000.00,
11 (id. at 49),² and planned to settle the claim once she obtained
12 the proper documentation.

13 One month later, Burrows sent defendant a second
14 written request for information detailing her medical expenses
15 and the medical release forms. (Id. at 50.) On February 29,
16 2004, Burrows received a letter indicating that Blue Shield of
17 California had a medical lien for expenses defendant incurred due
18 to the accident. (Id. at 51-52.) On April 6, 2004, Burrows sent
19 defendant a third request for her medical expenses and the
20 releases. (Id. at 53.) About one month later, Burrows received
21 the signed medical releases from defendant and then requested

22
23 ² The top line of the claim note lists "JBURROWS" as the
24 employee who entered the note; however, the closing line of the
25 note indicates: "**** NOTE CREATED BY: tadams ****." (Id. at
26 49.) At trial, the parties did not address whether Burrows or
27 Adams created the three claim notes that have this conflicting
28 designation. (Id. at 49, 53, 75.) Burrows, however, testified
to entering at least one of the claim notes that had this
designation and Adams testified only about entering claim notes
that have his name on the top line. Therefore, the court finds
that Burrows made the claim notes that have her name as the
author on the top line, even when the closing line indicates that
Adams created the note.

1 defendant's medical records ten days later. (Id. at 55-60.)
2 After receiving defendant's medical records, Burrows requested a
3 review of the records by Concentra, a third-party medical
4 reviewer. (Id. at 65.)

5 On June 28, 2004, Burrows entered an "Action Plan"
6 claim note that indicated the tasks she planned to complete: "1.
7 Obtain and review medical records. 2. Evaluate claim. 3. Call
8 claimant and negotiate settlement. 4. Obtain signed release. 5.
9 Issue settlement check. [and] 6. Close file." (Id. at 61.) On
10 July 19, 2004, Adams entered a claim note stating that
11 defendant's medical records showed a back herniation and
12 concurring with Burrows' decision to set the reserve at
13 \$15,000.00. (Id. at 65.) The following day, Burrows sent
14 defendant a letter informing her about the medical lien,
15 inquiring whether she intended to make a claim for lost wages and
16 out-of-pocket expenses, and requesting the requisite releases and
17 documentation. (Id. at 66-67.)

18 Via facsimile on August 2, 2004, Burrows received the
19 independent review report from Concentra; however, Burrows did
20 not log her receipt of the review or its findings into the claim
21 notes until September 5, 2004. (Def.'s Ex. O; Def.'s Ex. A at
22 71.) The report concluded that the accident probably "caused a
23 temporary exacerbation of [defendant's] unresolved pre-existing
24 low back condition which required a course of treatment an[d] a
25 period of temporary total disability." (Def.'s Ex. O at 5.)

26 On August 11, 2004, Burrows received a letter from
27 Michael M. Shea stating that he had begun representing defendant
28 on August 5, 2004. (Def.'s Ex. A at 68-69.) That same day,

1 Burrows sent a letter to Shea confirming receipt of his letter,
2 inquiring whether defendant intended to make a claim for lost
3 wages and out-of-pocket expenses, requesting documentation for
4 any such claims, and informing Shea of the medical lien. (Id. at
5 69-70.) At the close of her letter, Burrows stated: "Upon
6 receipt of this letter, please forward your theory of liability
7 and your client's settlement demand, so we can expedite
8 settlement of this case. Please be advised our client's
9 liability limits are 15/30."³ (Id. at 70.) After sending this
10 letter, Burrows expected to receive a settlement demand.

11 On September 1, 2004, Shea sent Burrows a letter that
12 stated: "Please be advised that we are gathering [defendant's]
13 medical records, billings, and wage loss information, and will
14 forward that information to you in the near future." (Def.'s Ex.
15 E.) Burrows entered this letter into the claim notes on
16 September 13, 2004. (Def.'s Ex. A at 74.) On September 16,
17 2004, Burrows entered an "Action Plan" indicating that "[w]e are
18 waiting for the rest of [defendant's] specials and settlement
19 demand." (Id.) The Action Plan also stated that Burrows
20 intended to settle the claim once she received the information
21 regarding defendant's wage loss and out-of-pocket expenses and
22 her settlement demand.

23 On September 24, 2004, Shea sent Burrows an offer to
24

25 ³ While the limits of Suburban Ford's policy at issue in
26 this case are \$15,000.00 per person and \$30,000.00 per accident,
27 Suburban Ford has separate coverage, with a limit of
28 \$10,000,000.00, for any direct liability claims. (Pls.' Ex. 34.)
For reasons the court can only speculate, defendant chose not to
argue that Burrows' statement regarding Suburban Ford's policy
limits constituted bad faith.

1 settle defendant's claim at the policy limit of \$15,000.00.
2 (Def.'s Ex. F.) The first sentence of the two-page letter
3 stated: "Please accept this as a settlement demand on behalf of
4 [defendant]." (Id.) Attached to the letter were twenty-seven
5 pages of copied documents that addressed defendant's wage loss
6 and out-of-pocket expenses. (Id.) The closing sentence of the
7 letter stated: "This demand will expire of its own accord and
8 without further notice on October 21, 2004." (Id.)

9 Sedgwick received defendant's settlement demand on
10 September 29, 2004, but Burrows did not log it into the claim
11 notes at that time. Burrows does not remember when she read the
12 letter; however, when she leafed through her mail the day the
13 demand arrived at Sedgwick, she saw the first page of the
14 settlement demand and was aware that it was from Shea. Because
15 Burrows was expecting to receive a settlement demand from Shea
16 and leafed through the letter and supporting documents when she
17 received it--which almost certainly would include noticing the
18 words "settlement demand" in the first sentence--the court finds
19 that Burrows knew the letter and attached documents contained a
20 settlement demand within the policy limits.⁴ Once she received
21

22 ⁴ While Burrows did not testify that she read the second
23 page that indicated the amount of the demand, the court finds
24 that Burrows had to know that the demand was within the policy
25 limits because it is more likely than not that she read the
26 second page of the settlement demand. Specifically, her October
27 25, 2004, discussed infra, conclusion that the "economic damages
28 alone are more than the [policy limit]" could have derived from
only two sources: 1) the second page of the letter that states
defendant's lost wages totaled \$120,000.00; or 2) the twenty-
seven pages of supporting documents accompanying defendant's
demand letter. (Def.'s Ex. A at 75; Ex. F.) Based on her cursory
approach to defendant's settlement demand, it is more likely
Burrows obtained this information from the simplest and shortest

1 the letter, Burrows believed she had all the information she
2 needed to settle the claim.

3 During the time between Sedgwick's receipt of
4 defendant's settlement demand and its expiration, two notes were
5 entered into the claim notes. On October 3, 2004, Burrows
6 entered her receipt of information about the medical lien, which
7 she had actually received on August 18, 2004. (Def.'s Ex. A at
8 74.) On October 19, 2004, Adams conducted a 270-Day File Review
9 and concurred with Burrows' decision to set the reserve at the
10 policy limit. (Id. at 75.) At the time he conducted this
11 review, Adams was not aware of defendant's settlement demand. On
12 October 21, 2004, defendant's settlement offer expired per its
13 terms.

14 The next entry occurred on October 25, 2004 in which
15 Burrows wrote: "We received medical and other specials, and the
16 economic damages alone are more than the [policy limit]." (Id.
17 at 75.) Based on this entry, Burrows conceded that she had to
18 have read defendant's settlement demand and the information
19 accompanying it before October 25, 2004 because the attachments
20 to the settlement demand were the only documents from which she
21 could have obtained the information in her October 25th claim
22 note. (Def.'s Ex. F; see also supra n.4.)

23 _____
24 source (i.e., the single sentence on the second page of the
25 demand, not the twenty-seven pages attached to it).
26 Additionally, when Burrows received a settlement demand on her
27 most significant claim, it is hard to fathom that she was not
28 curious as to the amount of the demand and did not flip to the
second page to satisfy that curiosity. Nonetheless, even if
Burrows did not look at the second page before the settlement
demand expired, the court still finds that she had to assume the
demand was within the policy limits because she had informed Shea
of the policy limits and knew he sent the demand.

1 Despite the fact that Burrows had knowledge of
2 defendant's settlement demand upon receipt of it on September 29,
3 2004 and had reviewed it in its entirety before October 25, 2004,
4 Burrows faxed two letters to Shea on November 1, 2004 that
5 feigned as if the settlement demand did not exist. Burrows'
6 first fax had one sentence: "Please advise when we can expect to
7 received [sic] [defendant's] additional specials and settlement
8 demand." (Def.'s Ex. G.) In her second fax, sent eight minutes
9 after the first, Burrows attached a copy of the medical lien.
10 (Def.'s Ex. H.)

11 Two days later, Burrows entered defendant's September
12 24, 2004 settlement demand into the claim notes. In doing so,
13 she entered, verbatim, the content of defendant's settlement
14 demand letter except for the last sentence establishing the
15 deadline. (Def.'s Ex. A at 76-77.) Nineteen minutes after
16 entering the letter and supporting documentation into the claim
17 notes, Burrows recommended settlement at the policy limits and,
18 twelve minutes later, requested permission to do so, which Adams
19 subsequently granted. (Id. at 78-79.)

20 In response to Burrows' November 1, 2004 faxes, Shea
21 mailed a letter to Burrows indicating that defendant's demand had
22 expired on October 21, 2004. (Def.'s Ex. I.) While Burrows did
23 not enter this letter into the claim notes, it prompted her to
24 discuss the claim with Adams and send Shea a letter on November
25 4, 2004 that purported to accept defendant's \$15,000.00
26 settlement demand. (Def.'s Ex. A at 79-82; Def.'s Exs. I, J.)
27 With her November 4, 2004 letter, Burrows included a settlement
28 agreement that required defendant and her husband to release

1 Delos Santos, Suburban Ford, and Sedgwick from all liability for
2 the accident, including the medical lien.⁵ (Def.'s Ex. J.)

3 Defendant and her husband did not sign this agreement
4 and, on November 10, 2004, Shea sent a second settlement demand
5 for \$500,000.00. (Def.'s Ex. K.) In response, and with the aid
6 of counsel, Burrows sent Shea a letter on December 3, 2004
7 refuting that Sedgwick had handled the claim in bad faith and
8 explaining that, "for the month of October and the beginning of
9 November 2004, [Burrows] was called away on several occasions for
10 family medical emergencies." (Def.'s Ex. L.) The letter offered
11 to settle defendant's claim for the policy limit of \$15,000.00.
12 (Id.)

13 At trial, Burrows explained that the "family medical
14 emergencies" referenced in her December 3 letter involved her
15 daughter's high-risk pregnancy due to the fact her daughter has
16 Marfan Syndrome, a genetic tissue disorder. Although Burrows
17 could not provide specific dates or details, she explained that
18 she had to leave work to attend numerous appointments with her
19 daughter and "had her attention diverted." During this time,
20 Burrows nonetheless did not take any time off work and worked
21 evenings and Saturdays to make up any time she missed.

22 On January 25, 2005, defendant initiated an action in
23 state court against Delos Santos and Suburban Ford based on her
24

25 ⁵ The parties stipulated that, if Shea and defendant were
26 called as witnesses, they would testify that defendant's claim
27 would have settled according to the terms in the settlement
28 agreement that accompanied Burrows' November 4 letter if Burrows
had sent the letter and settlement agreement before October 21,
2004. (Stipulated Trial Test. of Shea; Stipulated Trial Test. of
Reddy.)

1 injuries resulting from the September 22 accident. Over a year
2 later, plaintiffs initiated this action for a declaratory
3 judgment establishing that, because plaintiffs handled
4 defendant's claim in good faith, the policy limits remain at
5 \$15,000.00 per person injured. The court held a two-day bench
6 trial and, for the reasons explained in this memorandum, will
7 deny plaintiffs' request for a declaratory judgment.

8 II. Applicable Law

9 "The implied covenant of good faith and fair dealing
10 imposes a duty on an insurer to accept a reasonable offer to
11 settle a claim against its insured." Archdale v. Am. Int'l
12 Specialty Lines Ins. Co., 154 Cal. App. 4th 449, 464 (2007). An
13 insurer breaches that duty, and may be liable for the entire
14 judgment against the insured, if it rejects a reasonable offer of
15 settlement that is within the policy limits. Critz v. Farmers
16 Ins. Group, 230 Cal. App. 2d 788, 793 (1964), overruled on other
17 grounds by Crisci v. Sec. Ins. Co. of New Haven, Conn., 66 Cal.
18 2d 425, 430 (1967).

19 Conduct that constitutes "'good faith' or 'bad faith'
20 on an insurer's part has not yet proved susceptible to pat legal
21 definition." Allen v. Allstate Ins. Co., 656 F.2d 487, 489 (9th
22 Cir. 1981); see also Walbrook Ins. Co. v. Liberty Mut. Ins. Co.,
23 5 Cal. App. 4th 1445, 1455 (1992) ("[B]ad faith is . . .
24 recognized as an 'amorphous concept' which 'necessarily varies
25 with the context' and thus has 'no generally accepted "correct"
26 definition.'" (citations omitted). Consequently, instead of
27 applying a precise test to determine whether an insurer acted in
28 bad faith, and thereby breached the covenant, the trier of fact

1 must "undertak[e] a wide-ranging inquiry into such intangibles as
2 motive, knowledge, experience, and the ability to prophesy."
3 Walbrook Ins. Co., 5 Cal. App. 4th at 1456; see also id. ("[T]he
4 litmus of good faith/bad faith is to be tested against the
5 background of the totality of the circumstances in which the
6 insurer's disputed actions occurred."); Crisci, 66 Cal. 2d at 429
7 ("In determining whether an insurer has given consideration to
8 the interests of the insured, the test is whether a prudent
9 insurer without policy limits would have accepted the settlement
10 offer.").

11 In this inquiry, the trier of fact should consider:

12 [T]he strength of the injured claimant's case on the
13 issues of liability and damages; attempts by the insurer
14 to induce the insured to contribute to a settlement;
15 failure of the insurer to properly investigate the
16 circumstances so as to ascertain the evidence against the
17 insured; the insurer's rejection of advice of its own
18 attorney or agent; failure of the insurer to inform the
19 insured of a compromise offer; the amount of financial
20 risk to which each party is exposed in the event of a
21 refusal to settle; the fault of the insured in inducing
22 the insurer's rejection of the compromise offer by
23 misleading it as to the facts; and any other factors
24 tending to establish or negate bad faith on the part of
25 the insurer.

26 Brown v. Guarantee Ins. Co., 155 Cal. App. 2d 679, 689 (1957)
27 (emphasis added); see also Walbrook Ins. Co., 5 Cal. App. 4th at
28 1456 ("The relative weight of these factors--which are nebulous
and imprecise by their very nature--will, of course, vary from
case to case."); see also Critz, 230 Cal. App. 2d at 797
("Certainly, the extent of negotiations preceding the breakdown,
the timing of the insurer's rejection in relationship to the
sequence of accident, commencement of suit and trial are elements
in the fact trier's individualized adjudication of good or bad

1 faith.") (citation omitted).

2 Under the current standard, "[l]iability based on bad
3 faith does not require a showing of dishonesty, fraud or
4 concealment." Coe v. State Farm Mut. Auto. Ins. Co., 66 Cal.
5 App. 3d 981, 989 (1977) (citation omitted). At the same time,
6 however, "the duty to exercise good faith is not commensurate
7 with the duty to exercise the care of an ordinarily prudent
8 person under the same circumstances. Bad faith and negligence
9 are not legally synonymous." Davy v. Pub. Nat'l Ins. Co., 181
10 Cal. App. 2d 387, 395 (1960) (citation omitted); see also Aceves
11 v. Allstate Ins. Co., 68 F.3d 1160, 1167 (9th Cir. 1995) ("In
12 California, mere negligence is not enough to constitute
13 unreasonable behavior for the purpose of establishing a breach of
14 the implied covenant of good faith and fair dealing in an
15 insurance case.").

16 While negligence alone is not sufficient to constitute
17 bad faith, an insurer still has "the duty to give intelligent
18 consideration to an offer of settlement, with reasonable
19 investigation and a decision by persons reasonably qualified to
20 decide upon the risks involved.'" Walbrook Ins. Co., 5 Cal. App.
21 4th at 1457 (citation omitted).

22 III. Conclusions of Law

23 A. Defendant's Settlement Demand Was Reasonable

24 Defendant's imposition of a twenty-seven-day deadline
25 (twenty-two days once received) in which plaintiffs could accept
26 defendant's settlement offer was reasonable. See Critz, 230 Cal.
27 App. 2d at 798 ("[The injured party] had a right to attach a time
28

1 limit to her offer, but the insurer was not bound by it.”).⁶ At
2 the time it received defendant’s settlement demand, plaintiffs
3 had already investigated defendant’s claim, set the reserve at
4 the \$15,000.00 policy limit, indicated an intent to settle, and,
5 according to Burrows, believed that the settlement demand
6 provided all the information needed to settle the claim. Once
7 Burrows entered the settlement demand into the claim notes, it
8 took her no more than nineteen minutes to recommend that Sedgwick
9 accept the offer and only twelve more minutes to request
10 authority to do so. Under these circumstances, twenty-two days
11 to consider the settlement demand was clearly a reasonable amount
12 of time. See id. (one-week limitation to consider a settlement
13 offer was not unreasonable); Kelley v. British Commercial Ins.
14 Co., 221 Cal. App. 2d 554, 561 (1963) (less than a day to
15 consider a settlement offer was reasonable when the insurer had
16 knowledge of the relevant facts).

17 Plaintiffs argued that defendant’s settlement demand
18 was also unreasonable because it 1) did not include defendant’s

19
20 ⁶ Had plaintiffs contacted defendant before the deadline
21 and requested more time for a legitimate reason, defendant’s
22 refusal to extend the deadline may have been unreasonable. See
23 id. (“Had the company needed more time for investigation, for a
24 good faith assessment of the claim’s value or for consultation
with its policyholder, it might have chosen neither to accept nor
reject her offer, but rather to suggest additional time.”).
Plaintiffs did not, however, contact defendant before the
deadline.

25 Plaintiffs’ belated offer to settle the claim at the
26 policy limit shortly after the settlement demand expired does not
27 negate their prior bad faith. See id. at 796-98 (“The injured
28 party, however, is under no duty to keep negotiations open after
rejection of an early settlement offer. . . . Even if the insurer
attempts to resume negotiations by a belated offer of the policy
limit, that action does not necessarily relieve it of the onus of
an earlier bad faith rejection.”) (citation omitted).

1 husband or all potentially-liable defendants and 2) did not
2 resolve all claims or mention the medical lien. Upon receipt of
3 an allegedly insufficient settlement offer, however, plaintiffs
4 had the duty to respond and identify "any deficiency in the
5 offer's scope." Allen v. Allstate Ins. Co., 656 F.2d 487, 490
6 (9th Cir. 1981) ("[California law] does not require claimants
7 against insureds to begin settlement overtures with
8 letter-perfect offers to which insurers need only respond 'Yes'
9 or 'No.' An insurer's duty of good faith would be trifling if it
10 did not require an insurer to explore the details of a settlement
11 offer that could prove extremely beneficial to its insured.");
12 see also Saelee v. Progressive Classic Ins. Co., No. 07-2648,
13 2007 WL 120000, at *1 (E.D. Cal. Jan. 11, 2007) ("[The] duty to
14 communicate may be triggered by something less than a formal
15 offer.") (citation omitted). Without having made such an effort,
16 plaintiffs "cannot now in good conscience use [their] own failure
17 to explore the settlement offer as a defense of [their] own
18 breach of duty to tender the policy limits." Betts v. Allstate
19 Ins. Co., 154 Cal. App. 3d 688, 708 n.7 (1984).

20 B. Plaintiffs' Breached the Implied Covenant of Good Faith
21 and Fair Dealing

22 Plaintiffs ask the court to turn a blind eye to the
23 evidence in this case and find that Burrows' conduct was nothing
24 more than an "innocent mistake." Far from conduct constituting
25 mere negligence or an innocent mistake, however, Burrows made a
26 conscious decision to delay responding to defendant's settlement
27 demand with the knowledge that her delay could detrimentally
28 affect the insured.

1 Asking the court to believe that Burrows, a former
2 paralegal in a plaintiffs' personal injury law firm, did not know
3 the significance of placing a settlement demand on a back-burner
4 simply stretches credulity too far. Even assuming she managed to
5 work as a paralegal drafting motions for a personal injury law
6 firm without knowing that the failure to accept a reasonable
7 offer within the policy limits could expose the insurer to
8 liability in excess of the policy limits, Burrows had to know
9 that failing to settle a claim would subject the insured to
10 unlimited liability. Burrows' approach to the deadline--
11 pretending that she had not received the settlement demand when
12 she faxed Shea and omitting only the sentence establishing the
13 deadline when she typed the letter into the claim notes--further
14 suggests that she knew the consequences of her delay. Against
15 this backdrop of inevitable knowledge and suspicious conduct, the
16 court finds that Burrows made an intentional decision to ignore
17 the settlement demand with a conscious disregard for her duty to
18 protect her insured from needlessly facing unlimited personal
19 liability.⁷

21 ⁷ The court recognizes that most of the cases addressing
22 an insurer's conscious disregard for the rights of the insured
23 appear in the context of an insured's ability to recover punitive
24 damages from an insurer. See, e.g., Delgado v. Heritage Life
25 Ins. Co., 157 Cal. App. 3d 262, 276 (1984) ("In order to justify
26 an award of punitive damages the plaintiff must establish that
27 beyond the insurer's bad faith breach of an insurance contract,
28 it acted 'with the intent to vex, injure or annoy, or with a
conscious disregard of the plaintiff's rights.'"). Still, the
insurer's conscious disregard for the insured's rights is
indicative of bad faith because the showing required for the
court to award punitive damages is greater than the showing
required to find bad faith. See Hergenroeder v. Travelers Prop.
Cas. Ins. Co., No. 06-1232, 2008 WL 1805786, at *26 (E.D. Cal.
Apr. 21, 2008) ("In order to establish that an insurer's conduct

1 Even if the court believed that Burrows did not know
2 the consequences of her delay, it would still find that
3 plaintiffs breached the covenant of good faith and fair dealing.
4 When determining whether to settle a claim, the insurer "must
5 give at least as much consideration to the welfare of its insured
6 as it gives to its own interests." Egan v. Mutual of Omaha Ins.
7 Co., 24 Cal.3d 809, 818 (1979). The insurer's duty of good faith
8 also requires it to give "intelligent consideration to an offer
9 of settlement . . . by persons reasonably qualified to decide
10 upon the risks involved." Walbrook Ins. Co. v. Liberty Mutual
11 Ins. Co., 5 Cal. App. 4th 1445, 1457 (1992) (citation omitted)
12 (emphasis added). When, as in this case, failing to timely
13 accept a reasonable settlement demand can expose the insured to
14 unlimited personal liability, a claims handler who is oblivious
15 to the risk that delay causes cannot be "reasonably qualified to
16 decide upon the risks involved." Id. At a minimum, therefore,
17 an insurer cannot purport to satisfy its duty unless its
18 employees making crucial decisions are privy to such a
19 fundamental rule of insurance law that dictates direct
20 consequences for the insured based on the employees' conduct.

21 _____
22 has gone sufficiently beyond mere bad faith to warrant a punitive
23 award, it must be shown by clear and convincing evidence that the
24 insurer has acted maliciously, oppressively or fraudulently.'")
25 (citation omitted); Yang v. Peoples Benefit Ins. Co., No. 06-458,
26 2007 WL 1555749, at *15 (E.D. Cal. May 25, 2007) ("'[A]n
27 insurer's bad faith may not only breach the implied covenant of
28 good faith and fair dealing, but also can be treated for tort
purposes as a basis for exemplary damages where it occurs in a
context of malice, fraud, or oppression.'") (citations omitted);
Miller v. Elite Ins. Co., 100 Cal. App. 3d 739, 758 (1980) ("In
breach of good faith insurance cases, oppression has been defined
as a conscious disregard of the insured's rights by the
insurer.") (citation omitted).

1 In this case, the delay Burrows demonstrated was not
2 anomalous conduct that plaintiffs negligently allowed to slip
3 through the supervisory cracks. On the contrary, the evidence
4 revealed that Adams was aware of Burrows' dilatory claims
5 handling and did nothing. During his daily interaction with the
6 employees he supervised, Adams had to have seen the stack of mail
7 accumulating on Burrows' desk and, upon seeing mail in the stack
8 remain for extended periods, was at least aware that Burrows was
9 not following Sedgwick's policy of opening all mail within
10 twenty-four hours and attaching it to each file within three
11 days. Adams also knew about Burrows' delay on defendant's claim
12 based on his 270-Day File Review because the entry immediately
13 preceding his review indicated that Burrows entered her receipt
14 of the Concentra report almost two months after she actually
15 received it. Despite his awareness of Burrows' delay, Adams did
16 nothing.

17 At trial, not only did Adams refuse to acknowledge that
18 Burrows improperly handled defendant's claim, but he testified
19 that "it was handled actually very well." In the face of
20 questions about the extended delays between Burrows receiving a
21 letter and logging it into the claim notes, Adams stated that
22 Burrows "was always on top of all the communication that came in
23 the office," was "the most organized person in the office," and
24 "looked at, read, and acted upon" "every single piece of mail."
25 Based on Adams' inaction in response to Burrows' delay and his
26 testimony and demonstrated attitude at trial, the court finds
27 that plaintiffs condoned Burrows' brand of dilatory handling of
28

1 her claims as a matter of practice.⁸

2 The way defendant's claim was handled in this case runs
3 afoul of the insurer's duty of good faith and fair dealing, as
4 well as California's insurance regulations⁹ and every reasonable
5 practice in conducting a business, including Sedgwick's own
6 claims handling standards. Most notably, in the context of
7 claims submitted by the insured, the covenant of good faith and
8 fair dealing "imposes upon the insurer the duty to act promptly
9 on claims and to refrain from unreasonably withholding payment."

10 Lee v. Crusader Ins. Co., 49 Cal. App. 4th 1750, 1757 (1996).

11 The court can see no reason why the duty to act promptly on a
12 claim submitted by the insured does not extend to a claim
13 submitted against the insured, especially because the latter
14

15 ⁸ In many cases, bad faith is clear because the court can
16 readily identify that the insurer was acting in its own self-
17 interest. Here, the court can only speculate as to why
18 plaintiffs condoned dilatory claims handling that disregarded the
19 interests of its insureds. Finding that the insurer acted in
20 self-interest, however, is not a prerequisite to finding bad
21 faith, nor should it be as the motivations behind a company's
22 practices cannot always be definitively proven. See Walbrook
23 Ins. Co., 5 Cal. App. 4th at 1458 (insurer did not act in bad
24 faith because its "primary motivation was neither bad faith nor
25 its own interests"); Miller v. Elite Ins. Co., 100 Cal. App. 3d
26 739, 759 (1980) ("Bad faith failure to settle need not be based
27 on dishonesty, fraud or concealment but may be based on an
28 unwarranted refusal to meet the duty to accept reasonable
29 settlements.") (citation omitted); Davy v. Pub. Nat'l Ins. Co.,
30 181 Cal. App. 2d 387, 397 (1960) ("A determination respecting the
31 presence or absence of good faith involves an inquiry into
32 motive, intent and state of mind. Conclusions concerning such
33 matters, in most cases, are founded upon inferences.").

34 ⁹ For example, California's insurance regulations
35 provide: "Upon receiving any communication from a claimant,
36 regarding a claim, that reasonably suggests that a response is
37 expected, every licensee shall immediately, but in no event more
38 than fifteen (15) calendar days after receipt of that
39 communication, furnish the claimant with a complete response . .
40 . ." Cal. Code Regs. tit. 10, § 2695.5(b).

1 claim can have an even greater detrimental effect on the insured.
2 Plaintiffs, therefore, had a duty to act promptly on defendant's
3 settlement demand because only the insurer's prompt action could
4 have protected its insured from excess liability. See also Betts
5 v. Allstate Ins. Co., 154 Cal. App. 3d 688, 707 (1984) ("[The
6 insurer's] figurative hiding its head in the sand . . . is not a
7 law-sanctioned approach to reasonable investigation and
8 performance of its duty.").

9 Lastly, while a number of the Brown factors to the bad
10 faith inquiry are inapplicable or offer minimal guidance under
11 the facts of this case, Brown's consideration of the "failure of
12 the insurer to inform the insured of a compromise offer" further
13 underscores plaintiffs' breach of the implied covenant of good
14 faith and fair dealing. Brown v. Guarantee Ins. Co., 155 Cal.
15 App. 2d 679, 689 (1957). Specifically, an insurer has a "duty to
16 inform the insured of reservations and settlement offers" and
17 provide the insured with "the opportunity to contribute to a
18 settlement." Miller v. Elite Ins. Co., 100 Cal. App. 3d 739, 758
19 (1980). Here, however, when Burrows realized she had received a
20 settlement offer from defendant, she declined to inform Delos
21 Santos of the settlement demand. In fact, there is no evidence--
22 in the claim notes or in Burrows' testimony--that Burrows ever
23 contacted Delos Santos to inform her that Burrows was pursuing a
24 settlement with defendant. As Burrows' conduct and trial
25 testimony illustrate, plaintiffs did not "give at least as much
26 consideration to the welfare of its insured as it gives to its
27 own interests." Egan v. Mutual of Omaha Ins. Co., 24 Cal.3d 809,
28 818 (1979).

1 If the evidence in this case established only that a
2 generally proactive claims handler and insurer negligently missed
3 a deadline and contacted the claimant immediately upon discovery
4 of the missed deadline, as plaintiffs have argued, plaintiffs may
5 not have breached the implied covenant of good faith and fair
6 dealing. What the evidence revealed, however, was a claims
7 handler with a practice of conscious delay that the insurer
8 condoned. The implied covenant of good faith and fair dealing--
9 which requires insurers to make informed and prompt decisions--
10 cannot tolerate plaintiffs' conscious disregard for the
11 consequences of their intentional delay.

12 IT IS THEREFORE ORDERED that plaintiffs' request for a
13 declaratory judgment establishing that they handled defendant's
14 claim in good faith and that the policy limit remains at
15 \$15,000.00 per person injured be, and the same hereby is, DENIED.

16 The Clerk is directed to enter judgment in favor of
17 defendant and against the plaintiffs in this action accordingly.

18 DATED: June 12, 2008

19 

20 WILLIAM B. SHUBB
21 UNITED STATES DISTRICT JUDGE
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