



This is the property of the Daily Journal Corporation and fully protected by copyright. It is made available only to Daily Journal subscribers for personal or collaborative purposes and may not be distributed, reproduced, modified, stored or transferred without written permission. Please click "Reprint" to order presentation-ready copies to distribute to clients or use in commercial marketing materials or for permission to post on a website.

## Allstate ordered to pay \$14M

By America Hernandez

A Los Angeles jury ordered Allstate Insurance Co. to pay out \$14 million in an underlying catastrophic injury case after finding the company acted unreasonably during settlement talks with the crash victim.

The car insurance policy at issue had a \$100,000 limit, but an Allstate adjuster first accepted, then refused a demand for the full amount and instead offered about \$34,000 to a motorcyclist who became paraplegic when struck by an Allstate-insured driver, court documents show.

The jury concluded the insurance company acted unreasonably, but not maliciously, and ordered Allstate to pay the full verdict from the underlying collision suit with no additional punitive damages.

Carlos Madrigal et al. v. Allstate Insurance Co. et al, 14-CV-04242 (C.D. Cal, filed June 2, 2014)

Allstate was represented by Peter H. Klee and Theona T. Zhordania, partners at Sheppard, Mullin, Richter & Hampton LLP in San Diego and Los Angeles, respectively.

Plaintiffs were represented by Arash Homampour of The Homampour Law Firm in Sherman Oaks, as well as Warren J. Binder of Binder & Associates in Pasadena.

In July, 2009 Allstate-insured driver Richard Tang was moving from the center to the right lane in preparation for a right-hand turn when he collided with motorcyclist Carlos Madrigal.

At trial in 2012 a jury found Madrigal's damages exceeded \$10 million and that Tang was 100 percent at fault for the accident, having failed to look in his rearview mirror before cutting Madrigal off. Carlos Madrigal v. Richard Tang et al, BC445794 (L.A. Super. Ct., filed Sept. 17, 2010)

Tang and Madrigal proceeded to sue Allstate for the full judgment amount because of the insurance company's initial acceptance and subsequent refusal of a \$100,000 settlement offer, which they alleged constituted bad faith negotiation and breach of implied covenant.

Homampour credited U.S. Magistrate Judge Suzanne H. Segal for denying Allstate's motion for summary judgment on breach of implied covenant claims in light of a recent appellate opinion governing what constitutes reasonable settlement discussions.

The appellate opinion, Graciano v. Mercury General Corp., 231 Cal. App. 4th 414 (Cal. App. 4th Dist. Oct. 17, 2014), holds that insurers are required to accept reasonable offers to settle within policy limits, but that an offer is unreasonable if it fails to release one or more of the insureds.

"In this case Allstate did not disclose that in addition to the driver Richard Tang, the policy also included his wife Anna Tang, who owned the car," Homampour said, adding that he has seen insurance companies use the case to "cheat claimants out of rightful recovery" by not informing plaintiffs of all insureds on a policy.

Because the plaintiff in this case did not know about additional insureds, he could not have included them in his offer, the judge found. Thus Madrigal's offer was not unreasonable as a matter of law, but a fact for a jury to decide, as well as whether

Friday, November 27, 2015

### Litigation Federal prosecution of alleged insurance scam expands

Executives falsely billed over half a billion dollars and paid illegal kickbacks to doctors for referrals, prosecutors say.

### Federal judge orders Microsoft antitrust lawsuit closed

Lucy H. Koh found that the no poach charges against Microsoft are too old to be litigated

### Allstate ordered to pay \$14M

A jury ordered Allstate Insurance Co. to pay \$14 million on behalf of an insured client after finding the company acted unreasonably during settlement talks in the underlying catastrophic injury case.

### Government Kamala Harris wades into chemical spill litigation

California Attorney General Kamala D. Harris announced Wednesday that the California Department of Justice will join forces with the Ventura County District Attorney's Office in the county's legal battle over an explosion at a Santa Clara Waste Water Co. facility in Nov. 2014.

### Litigation SoCal Gas pipe leak prompts class action

An underground natural gas leak reported Oct. 22 has caused a fire in a home in Los Angeles. **CHAMPIONS OF JUSTICE** KRLA, KFVB, KABC, KCBQ, KTIE, KTKZ, KDOV from exposure.

### Alternative Dispute Resolution

**Steven H. Kruis**  
ADR Services Inc. San Diego

### Obituaries

#### Ellen C. DeShazer, 1938-2015

Ellen C. DeShazer, a Los Angeles County Superior Court judge influential in establishing Compton's drug court, died Nov. 22 after a years-long battle with cancer. She was 76.

### Litigation Yelp squelches securities class action

A proposed securities class action against review service Yelp Inc. has been dismissed by a federal judge, who quashed any future complaints from the plaintiff, calling further attempts "futile."

Allstate's acceptance then refusal constituted good or bad faith negotiating.

"Allstate's position would appear to permit an insurer to make only a partial disclosure of its insureds and then categorically reject a settlement demand as unreasonable because the injured party, in reliance on the insurer's representations, failed to release all of the insureds," Segal wrote in her partial denial. "Allstate's duty to make a reasonable effort to settle required Allstate ... to inform Madrigal that Anna Tang was also an insured who had to be released."

Klee declined comment, but noted that a jury verdict has no bearing on case law.

After pre- and post-judgment interest, the amount Allstate must pay stands around \$14 million.

[america\\_hernandez@dailyjournal.com](mailto:america_hernandez@dailyjournal.com)

[Previous](#)   [Next](#)

### Insurance

#### **Clock is ticking for insurers to defend insured**

Chaucer's proverb "better late than never" may provide a constructive maxim for human behavior, but it doesn't apply to an insurance company's defense of its insureds against a third-party liability lawsuit. By **Robert J. McKennon and Joseph S. McMillen**

### Tax

#### **Living abroad, paying taxes in the USA**

Over 8 million Americans live and have bank accounts abroad. Many receive letters from their banks requesting U.S. tax ID numbers, with some banks even asking Americans to certify their compliance with the IRS. By **Robert W. Wood**

### Bar Associations

#### **State Bar unit seeks more tools to probe reinstatement applicants**

The State Bar's attorney discipline unit has proposed a rule that Chief Trial Counsel Jayne Kim said would allow her office to more thoroughly investigate the moral character of those seeking reinstatement.

## DON'T MISS CHAMPIONS OF JUSTICE

EVERY SATURDAY AND SUNDAY ON THE FOLLOWING STATIONS:

- KRLA 870 LOS ANGELES
- KFWB THE BEAST 980AM LOS ANGELES
- KABC 790 LOS ANGELES
- KCBQ 1170 SAN DIEGO
- KTIE 590 SAN BERNARDINO
- KTKZ 1380 SACRAMENTO
- KDOW 1220 SAN FRANCISCO
- WRC AM 1260 WASHINGTON, DC



Hosted by:  
**THOMAS V.  
GIRARDI**

Listen to the  
Finest Legal Minds  
in California  
Talk about the Law