


Inadequate Liability Limits: Impacts on Insureds, Brokers, Claimants, and Insurers
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Thank You

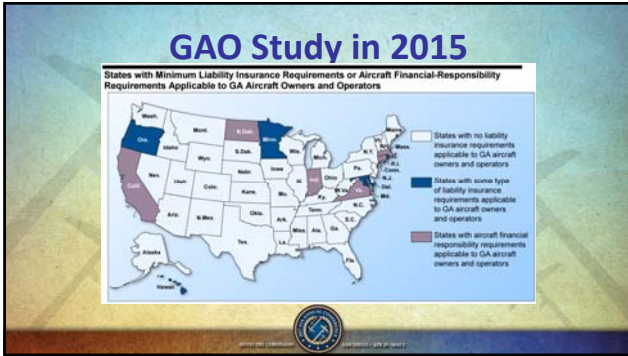
- Mark R. Hildebrand
 - Schnader Coop Intern
 - Drexel Law School 3L (class of 2017)



How do we end up in this situation?

- Mostly in G.A.
 - Only a handful of states require insurance
 - Market availability/Cost








Real Life Example

- Midair collision between Cirrus SR22 and Robinson R44
- Cirrus pilot on 45 to the downwind 250' below published traffic pattern altitude
- Three men in helicopter are killed
- Cirrus has \$1M/\$100K per seat
- Jury verdict this month: \$16,621,058




The Claimant




- Impacts on the claimant
 - judgment-proof insured may preclude compensation
 - bad faith claim against insurer?
 - professional liability claim against broker?

The Insured




- Impacts on the insured
 - Excess liability/bankruptcy
 - May lead to a bad faith claim
 - May lead to a claim against broker
 - Potential early loss of defense in multiple claimant scenarios


Insurer




- Impacts on the Insurer
 - Could prolong or shorten defense
 - Could make defense cheaper or more costly
 - Increases likelihood of bad faith/professional liability claim if limits are not offered early



Insurer






- Duty To Defend (majority)
 - exhausts limit paying judgments or settlements
 - to release one claim or one insured
 - and policy language permits
 - and insurer acts in good faith




Insurer


- Duty To Defend
 - Interplead Limits?




Insurer




- Duty to settle (single claim)
 - Attempt to settle when excess
 - Reasonably possible
 - Likely
 - Evaluate claim as though there is no liability limit
 - Demand within limits (in some jurisdictions)




Insurer




- Duty to settle (multiple claims and inadequate limits)
 - Majority: First to settle
 - Minority: First to judgment
 - Minority: Pro Rata




Insurer




- Duty to settle – Emerging Trend
 - fully investigate all claims
 - limit Insured's liability as best as the Insurer can
 - settle as many claims as possible within the limits of the policy proceeds
 - keep the Insured informed about settlement opportunities and settlements




Insurer




- How can insurer “limit Insured’s liability as best as the Insurer can” and reduce bad faith risk?
 - global resolution
 - let insured control or otherwise be involved
 - seek the most “bang for the buck”




Insurer




- Duty to settle (when the limits are inadequate and there are multiple insureds)
 - Majority (lower standard): can settle for one
 - Minority (higher standard): cannot favor one over the other (aka “the rock and the hard place”)




Insurer




- What happens when settlement cannot be accomplished?
 - Provide thorough defense
 - Provide appropriate experts
 - Not the time to be sparing




The Insurance Broker




- A target when the insured ends up with personal liability
 - Majority rule (low standard): reasonable care, honest disclosure
 - Minority (higher standard): duty to advise on adequacy



The Insurance Broker



- A “special relationship” or “special circumstances” may impose higher duty.
 - Length of relationship
 - Payment for advice
 - Broker represents self as highly skilled in particular area
 - Broker makes recommendations for coverage, limits, or both



Questions?