



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

HYPOTHETICAL

The insurance company sold a policy of automobile insurance with a \$50,000 policy limit to Defendants, an employed couple of modest means who own their own home. However, the assets of Defendants clearly exceed the \$50,000 policy limits.

The Defendants are involved in a motor vehicle accident with Plaintiff, who is claiming a total disability due to a closed head injury. Defendants were at fault in the accident. Plaintiff has demanded \$250,000 to settle the case.

Plaintiff's emergency room records reveal an intracranial bleed, but a subsequent EEG and CT scan are negative. Plaintiff is claiming cognitive deficits, but has never undergone neuropsychological testing. Furthermore, an investigation into Plaintiff's background reveals a history of pre-existing psychological problems.

Defense counsel, who is employed by the insurance company, believes that a good damage defense can be mounted. Defense counsel thinks that the intracranial bleed may have resolved and that any symptoms complained of by Plaintiff were the result of previously existing psychological problems. He believes that the best damages defense would require the scheduling of an examination by a neurologist, a neuropsychologist, and a psychiatrist, which would cost a total of \$10,000 unless their trial testimony was taken, in which case it would cost more.

Defense counsel's employer insurance company, however, is currently reducing costs by limiting the amounts spent on expert examinations and evaluations. Defense attorney is reluctant to recommend the three examination in view of the company litigation expense reduction campaign and the low policy limits, but the Defendants themselves are collectable for amounts in excess of the policy. What should the lawyer tell his client under the circumstances, and what should the lawyer tell the insurance company under the circumstances?

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