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**Delcolliano, et al v. Palisair**

1 message

**Clay Robbins** <clayrobbinsiii@yahoo.com>

Mon, May 23, 2016 at 11:53 AM

Reply-To: Clay Robbins &lt;clayrobbinsiii@yahoo.com&gt;

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Friends

I had a meeting with Ms. Serota and Donn Burkholder about plaintiffs' Section 998 demand. They are not of a mind to accept the demand and understand the consequences of that decision. They simply do not feel the merits of the case warrants a payment in that range. They do not believe there is any merit in the plaintiff's (Mr. Delcolliano) bodily injury claims and further believe your evaluation was reasonable and appropriate.

I voiced my concern that variances had been granted in the past (admittedly under different circumstances) and that could be used as a basis to mount a waiver argument.

I can see a lot of reasons to undercut that argument, but that would take a good deal of preparation to outline those different circumstances so as to show how plaintiffs are mixing apples and oranges by pointing to those past decisions. That background work has yet to be undertaken and will be expensive. I wanted to keep the insurer involved in the effort to get this case settled, while being mindful that I did not want to push too hard on getting the insurer out of it's comfort zone so as to avoid getting into a discussion about what the insured would contribute. They did not raise that issue.

Rather, they decided that they would not accept the plaintiffs' demand, but would issue their own 998 demand in the amount of \$150,000.00. I tried to push them to \$200K, but they were not willing to go there (at this point).

This will now put pressure on the plaintiffs (the same issues I explained to you about the 998 served on us about being responsible for your expert costs if they do not get a verdict in excess of \$150K).

I think that is a good move on your behalf. It is conditioned on confidentiality (which may or may not be enforceable under 998 - but I question whether plaintiffs are that sophisticated). As it stands, if plaintiffs lose they could be responsible for attorney fees. If they lose or are awarded less than \$150K, they are responsible for your expert costs. If they're smart, they'll need to think hard before rejecting. I do not believe they have a strong case and would be taking a significant risk. I think if pushed the insurer may be willing to pay \$200K, but I doubt much (if any) more.

I will continue to keep you advised. Let me know if you have any questions.

All the best

Clay

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