



MISSOURI COURT IMPOSES BAD FAITH LIABILITY DESPITE JUDICIAL FINDING OF NO COVERAGE FOR UNDERLYING CLAIM

Advantage Buildings & Exteriors, Inc. v. Mid-Continent Casualty Company
2014 WL 4290814 (Mo.App. W.D.)

In *Advantage Building*, the Western District of Missouri Court of Appeals affirmed a judgment against an insurer for extra-contractual liability for bad faith failure to settle a claim within the policy limits. Interestingly, the court did so even though the insurer prevailed in a separate declaratory judgment action that found the CGL policy provided no coverage for the underlying claim.

The underlying damage suit included claims of breach of warranty, negligence, and property damage resulting from construction defects in a building for which the insured supplied the exterior wall panels. The insurer provided a defense, but informed the insured it was reserving its rights under the CGL policy. The insurer determined coverage was limited to approximately \$53,000 worth of damage to the interior of the building only. However, the insurer waited two years before informing the insured of its coverage position.

The insured's counsel demanded the insurer settle the claim within the policy limits, and there was an opportunity to settle the claim within the policy limits at mediation. The insurer failed to resolve the claim.

Five days before trial, the insurer filed a declaratory judgment action seeking a judicial determination of the coverage issue. The next day, the insurer informed its insured, for the first time, that coverage was limited to damage to the interior of the building only. The damages case proceeded to trial, resulting in a verdict against the insured in excess of the policy limits. The insured entered into an agreement with the claimant to pursue the insurer for bad faith and not to execute on the judgment.

The bad faith case proceeded to trial, and resulted in a judgment against the insurer for bad faith and punitive damages. In the meantime, the court determined there was no coverage under the CGL policy. The trial court allowed the insurer to offer evidence of its belief regarding coverage, but prohibited it from introducing the court's subsequent no coverage ruling. The insurer appealed.

The appellate court affirmed the trial court's judgment as to the insurer's liability for compensatory damages. The court reversed and remanded for a retrial on the issue of liability for punitive damages, and on the amounts of both compensatory and punitive damages. This newsline will not address the damages issues raised on appeal.

The appellate court affirmed the trial court's submission of the bad faith claims to the jury because it found the insurer's reservation of rights was fatally deficient, as was its lack of communication with the insured up to the time of trial.

The appellate court upheld the trial court's ruling preventing the insurer from offering evidence at the trial on the bad faith claim that it had prevailed in the coverage action. The court's rationale was that it was irrelevant the insurer ultimately prevailed in the coverage action, because there had been no coverage determination at the time the insurer failed to settle the claim within policy limits. What the insurer learned about the coverage issue after a judgment had been taken against its insured was not probative of the issue whether the insurer acted in good faith before trial.

This case highlights the importance for an insurer to effectively reserve its rights under the policy while obtaining a timely determination of coverage issues. The unique facts of this case show that prevailing on a coverage issue may not necessarily preclude a finding of bad faith in Missouri, especially if the insurer's communication with its insured has not been timely and informative.



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