

No Provable Conscious Wrongdoing, No Bad Faith

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Summary: Thomas and Allison Missler's home was destroyed in a fire on June 1, 2011. While the fire department was responding to the fire, the Misslers' State Farm insurance agent, Theresa Chapman, arrived at the scene. The Misslers had purchased a homeowners insurance policy from State Farm which provided dwelling coverage, personal property coverage and coverage for additional living expenses. After arriving, Chapman contacted Indiana Restoration & Cleaning Services ("IRCS"), a State Farm preferred vendor. The Misslers became dissatisfied with IRCS and State Farm. They then filed suit against both and appealed after State Farm prevailed on its motion for summary judgment. State Farm prevailed on appeal.

Missler v. State Farm Ins. Co.

IRCS sent Kristin Kendall, who arrived at the fire scene, discussed with the Misslers the restoration services IRCS could provide, and then presented a contract to the Misslers. When the Misslers asked if they could have time to review it, Kendall advised that she needed an answer within three days to begin work before mold set in. The Misslers asked Chapman for her input, but Chapman advised she was not allowed to make specific recommendations. However, Chapman did say that IRCS was a preferred vendor and that they were present at the scene already. The Misslers then gave IRCS verbal permission to begin work.

The Misslers later learned from RJ Van Noy, State Farm's claims representative, that IRCS was a State Farm preferred vendor only for dwelling repairs, not for personal property restoration. Nonetheless, the Misslers signed the IRCS contract two days after the fire. The contract added IRCS as a joint payee for all reimbursement checks sent by State Farm and assigned all the Misslers' rights to the checks to IRCS. The contract also stated it would be deemed conversion if the Misslers attempted to cash the checks.

The Misslers were not satisfied with the restoration services performed by IRCS. Even after additional cleaning by IRCS, some of the Misslers' items still retained the smell of smoke. Van Noy worked with IRCS and with IRCS's providers, confirmed the smokey smell and listed the items as non-salvageable. Even though there were not satisfied with IRCS's services, they nonetheless endorsed the State Farm reimbursement checks to IRCS due to the threats of conversion.

Two years after the fire, the Misslers filed suit against State Farm for breach of contract and bad faith, along with a separate cause of action against IRCS. The complaint against both defendants primarily stemmed from the terms of the IRCS contract—that it stripped away the Misslers' right to decide which items would be cleaned and which items they would receive a cash settlement. The complaint alleged that because IRCS was a preferred provider for State Farm, State Farm should have known about this term. It also claimed that State Farm exercised an unfair advantage over the Misslers by calling IRCS to the scene of the fire without giving them adequate time to assess their options. State Farm prevailed on its motion for summary judgment on both counts, which the Misslers' appealed.

Under Indiana law, part of an insurer's duty of good faith to its insured includes an obligation to refrain from exercising an unfair advantage to pressure an insured into a settlement. In order to prevail on a bad faith claim, the insured must also prove conscious wrongdoing by the insurer.

The Indiana Court of Appeals quickly dispensed with both the Misslers' arguments against State Farm. First, the State Farm claims representative had told the Misslers, IRCS was not a State Farm preferred provider for personal property restoration. Therefore, State Farm could not be expected to know the IRCS contract terms. Second, the evidence showed that State Farm attempted to help the Misslers resolve their issues with IRCS and the contractors it employed. Thus, the Court was unable to find any genuine issues of material fact to preclude a grant of summary judgment in favor of State Farm on the bad faith claims.

By Brett Simon

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