

Fact Issues Regarding Insured's Failure to Cooperate Defeat Bad Faith Summary Judgment

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Summary: R & G sued American Family for breach of contract and statutory bad faith penalties after sustaining two separate property damage losses that were both denied under the vacancy exclusion and for R & G's failure to cooperate in the investigations. On appeal the court found the trial court properly denied the insured's motions for summary judgment, including on the issue of bad faith penalties.

R & G Investments and Holdings LLC v. American Family Insurance Company

R & G Investments owned a multi-building, residential apartment complex insured by American Family. In February, a building in the complex was damaged by vandalism while vacant and undergoing renovations. Later in the year, a different building sustained damage from a water pipe that burst, causing flooding. Only 1 of the 8 units in that second building was occupied at the time.

American Family denied coverage for both claims citing the policy's vacancy exclusion and R & G's failure to cooperate with investigations of the claims. R & G brought suit against American Family for breach of contract and statutory bad faith penalties and attorneys' fees.

The trial court denied R & G's motions for summary judgment on both claims finding the vacancy exclusion was applicable and precluded coverage. R & G appealed.

The court of appeals held the vacancy exclusion did not apply to the loss caused by vandalism because it was under renovation at the time, thus, not falling into the policy's definition of "vacant." The court held it was error not to grant R & G summary judgment on this issue. However, the court then held that summary judgment was not appropriate on the issue of whether R & G had failed to cooperate with investigation of the vandalism claim.

R & G claimed the trial court erred in denying its motion for summary judgment seeking bad faith penalties under OCGA § 33-4-6 for American Family's refusal to pay its vandalism claim. The court explained R & G bore the burden of proving the refusal to pay the claim was in bad faith. Further, penalties are not authorized under the statute if the insurer had reasonable grounds to contest the claim and where there was a disputed question of fact. The question of whether an insurer acted in good faith or bad faith is usually a question for the jury. And, bad faith is shown by evidence of the terms of the policy and the facts of the claim.

The court found because there was a question of fact as to whether R & G failed to cooperate with the investigation, at a minimum, there was a question of fact whether American Family had reasonable grounds for contesting the claims. It was disputed whether R & G properly produced reasonably requested documents pre-suit and produced the proper person for examination under oath. The court ruled summary judgment was properly denied to R & G on the issue of bad faith.

By Katrina Smeltzer

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