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BAD FAITH BLOG

Tennessee Fire Loss Victim's Statutory Bad Faith Penalty Appropriately Awarded

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Brandi Burge's mobile home and all of its contents were destroyed by fire in July 2013 while insured by Farmers Mutual of Tennessee. Farmers Mutual paid an advance in August 2013, but denied the claim without disclosing why. Suit was filed one year later. After 10 months of discovery Farmers Mutual declared (in discovery responses) the policy void *ab initio* because Plaintiffs failed to disclose "multiple mortgages on the property." At a bench trial three years after the fire, the trial court entered judgment for Plaintiffs for damage to the mobile home, loss of personal property, additional living expenses, and a statutory bad faith penalty of 15 percent. On appeal the judgment was affirmed, but modified to increase the award on the mobile home and to add post-judgment interest.

Brandi Burge v. Farmers Mutual of Tennessee

Brandi Burge, her husband, and their five children were living in a mobile home purchased in 2008 when it was destroyed by fire on July 10, 2013. Co-owners of the mobile home were Mrs. Burge's parents who, along with Mrs. Burge, filed suit in July 2014, after the insurance company had paid only a $2,000 advance. The insurance company in its Answer admitted the fire loss, but alleged that the policy was void *ab initio* because "Plaintiffs made material misrepresentations in their application for insurance in 2008." The insurer did not specify the misrepresentation. In response to an Order compelling insurer to answer discovery, in May 2015, the insurer stated Plaintiffs failed to disclose on the application for insurance "multiple mortgages on the property." Shortly thereafter, the parties filed cross-motions for summary judgment on that issue. The Court entered summary judgment for Plaintiffs holding there was only one lienholder on the mobile home which Plaintiffs had specifically listed on the insurance application. Nearly three years after the fire a bench trial was held on the issue of damages only. The total judgment award of $127,500 amounted to $4,000 less than the policy limit on the mobile home, the policy limit on the contents, $2,500 for additional living expenses, pre-judgment interest at 10 percent and a 15 percent statutory bad faith penalty.

On appeal the insurer raised multiple issues including valuation issues regarding the mobile home, the personal property, and additional living expenses. The appellate court ruled that the trial court appropriately calculated the additional living expenses and the award for the policy limit on the personal property, but added $4,000 (up to the policy limit) for the value of the mobile home. All witnesses agreed the mobile home had been improved after the purchase and all valued it at least $70,000. The trial court had awarded $65,000 believing that all mobile homes depreciated greatly and substituted his belief of the value as opposed to the unopposed evidence before him.

The Court of Appeals also discussed at length the appropriateness of the bad faith penalty. Tenn. Code Ann. § 56-7-105 allows a maximum penalty of 25 percent in addition to the loss and interest whenever an insurance company has, in bad faith, refused to pay an insurance claim within 60 days. In Tennessee, in order to recover a plaintiff has to prove: (1) the policy of insurance became due and payable; (2) a formal demand for payment was made; (3) the insured must have waited 60 days after demanding payment before filing suit; and (4) the refusal to pay must not have been in good faith.

The insurer argued that it had substantial legal grounds for not paying, but the appellate court disagreed. According to the appellate court "[a] simply inquiry would have disclosed that only one mortgage encumbered the insured property, i.e., the mobile home." Having failed to make that simple inquiry, no substantial legal grounds supported the material misrepresentation defense. Furthermore, the court found that Farmers Mutual "compounded the problem by failing to process Plaintiffs' claim in a diligent manner." Rather than simply explaining its position shortly after the fire, it first disclosed its defense nearly two years after the fire. As soon as Plaintiffs learned of the insurer's position, Plaintiffs provided evidence disproving the material misrepresentation defense upon which Farmers Mutual relied. In light of the bad faith evidence in the record, the Court of Appeals agreed "that Insurer's refusal to pay the loss was not in good faith."

The Plaintiffs also complained about the award, contending they were entitled to the maximum penalty of 25 percent, rather than only 15 percent. The Court of Appeals noted that a bad faith penalty statutory award is not "simply a punitive award." Rather, the statute allows the recovery "of the additional damages caused by a breach of the insurance policy." (Emphasis added.) In Tennessee, the statute provides for the imposition of a statutory penalty within the discretion of the trier of fact, but it must "be measured by the additional expense, loss, and injury including attorney fees thus entailed." The facts in *Burge* demonstrated that the 15 percent statutory penalty award was roughly equivalent to the amount of attorney fees incurred by the Plaintiffs. For that reason, the trial court did not abuse its discretion awarding that amount as a statutory penalty.

Although the Court of Appeals was not willing to award attorney's fees on appeal, it did award post-judgment interest because the Tennessee Code mandates such an award. The trial court's ruling was "affirmed as modified and remanded for further proceedings" to increase the amount of the award for damage to the mobile home to the policy limit, to award post-judgment interest, and to tax the costs of appeal against Farmers Mutual.

The *Burge* case demonstrates that Tennessee insurers must make sure they truly have a good faith basis for denying coverage or refusing to pay on a loss. Having an arguable defense to coverage, which is easily proven wrong, fails to satisfy Tennessee's standards. As long as there are "substantial legal grounds" supporting the refusal to pay, the penalty should not be imposed. Nor should it always be imposed simply because an insurer unsuccessfully defends the case. As long as "there is a genuine dispute as to value, no conscious indifference to the claim, and no proof that the insurer acted from any improper motive," no statutory bad faith penalty should be awarded. Tennessee courts uphold statutory penalty awards whenever the insurer treats its insured "unfairly", where "the most rudimentary [and timely] inquiry [and] investigation" would have resolved the liability question, and when an insurance company acts with "conscious indifference" toward the claim and "cavalierly ignore[s] the true facts." Tennessee insurers acting in those prohibited ways will likely face statutory bad faith awards.