

Seventh Circuit Reverses Extracontractual Award, Concluding Section 155 Does Not Apply to Insurer's Alleged Unreasonable Delay in Paying Judgment

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After a decade-long, three-lawsuit fight between Selective Insurance Company of the Southeast and its insured Creation Supply, Inc., the United States Court of Appeals for the Seventh Circuit decided a narrow question of statutory interpretation – whether the district court properly awarded extracontractual damages to the insured under § 155 of the Illinois Insurance Code, 215 ILCS 5/155. Under § 155, an insured may seek extracontractual damages from an insurer in any case where at least one of three issues remains undecided: (1) the insurer's liability under the policy, (2) the amount of the loss payable under the policy, or (3) whether there was an unreasonable delay in settling a claim.

Although § 155 claims usually proceed alongside breach-of-contract claims, such as the other claim brought by the insured in this lawsuit, the Court of Appeals rendered an atypical result here, holding that since none of the three threshold extracontractual issues remained undecided, the insured could not pursue § 155 damages. As to the first issue, the insurer's liability was resolved by a separate declaratory judgment action in Illinois state court in 2015. The amount of loss payable by the insurer under the policy was determined by a separate action in 2017, thus determining the second issue. And because the insured did not seek recovery for any unreasonable delay by the insurer in *settling an insurance claim* by the insured – but rather for the insurer's alleged failure to timely pay on a *judgment* – the third issue under § 155 was not undecided. Accordingly, the Court of Appeals held the insured was not entitled to § 155 damages by operation of the statute's plain language.

Ultimately, the Court of Appeals reversed the district court's award of extracontractual damages to the insured, concluding not all breach-of-contract claims permit an accompanying § 155 claim, just those for which at least one § 155 threshold issue remains undecided.

Case Citation: *Creation Supply, Inc. v. Selective Ins. Co. of the Southeast*