

BAD FAITH BLOG

Aggressive Discovery Tactics Support Fraud Claim Against Property Insurer

AUTHOR: JOHN SANDBERG

Summary: Insured owners of a shopping mall brought a fraud claim against CGL Insurer after the insurer denied coverage and filed a declaratory judgment suit in which they aggressively went after the insured.

General Ins. Co. of America v. Clark Mall Corp., 738 Fed. Supp.2d 864 (N.D. IL 2010)

General Ins. Co. of America (“GICA”) filed a declaratory judgment action against its insured Clark Mall Corporation (“Clark”). Clark then brought a counterclaim for fraud against GICA alleging that GICA issued the property insurance policy but had no intention of honoring it. GICA moved to dismiss the fraud claim alleging that under holding of the US Supreme Court case of *Bell Atlantic Corp. v Twombly*, 127 S.Ct. 1955 (2009), the claim did not contain sufficient factual matter to state a claim for relief. The court denied the motion and pointed out that the complaint outlined a series of acts that were allegedly designed to effectuate an overarching scheme to collect premiums without having to pay claims. The claimed acts included, multiple document requests that covered not only the mall where the fire occurred, but other business interests of the defendant, discovery directed at the defendant’s accountants, days of depositions of an officer of the insured, a failure of GICA to respond to inquiries about the progress of their claim, and the passing of a year and a half without any determination of the defendants claim. The court described GICA’s claimed conduct as giving the insured the proverbial “run around.” GICA also attacked the counterclaim as implausible because it did not allege a motive for GICA. The court disagreed that a motive must be pleaded. The court went on to say that in a case such as this the motive is obvious, i.e. profit.

This case is interesting both because it may be cited in support of future fraud claims to be filed against insurers in Illinois and it demonstrates how an insurer's claimed investigation and subsequent discovery tactics can serve as the basis for a fraud claim premised on an insurer collecting premiums for insurance coverage it knew it never intended to honor. Although the merits of the fraud claim were not reached by the court, the court ruled that the insured had stated a claim by relying in part on the insurer's aggressive investigation and declaratory judgment discovery tactics in support of the claim. The lesson for insurers in Illinois is to use all of the investigation and discovery tools available to obtain the information necessary for making the correct claims decision at the earliest date possible, but to exercise those tools properly and reasonably tailored to the nature of the claim presented. As the court noted, the insured had not proved what it alleged, but it was obvious that the insurer's aggressive discovery tactics would be used as evidence against the insurer in the trial of the subsequent fraud claim.