

BAD FAITH BLOG

The Lack of Coverage Bars Common Law and Statutory Bad Faith Claims

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Summary: Cincinnati Insurance concluded that it had no duty to defend tenant Moon for a child's drowning death in a swimming pool while Moon was babysitting the child. The Northern District of Georgia agreed with Cincinnati and the 11th Circuit Court of Appeals affirmed.

Moon v. Cincinnati Insurance Company

The Moons were tenants at property owned by Shawn Moon's father. A child Moon was babysitting drowned in the swimming pool. The Moons sought coverage and defense and indemnity under the Cincinnati insurance policy issued to Mr. Moon's father. The coverage was to "any person... while acting as [Moon's father's] real estate manager."

The underlying litigation brought by the child's parents resulted in a judgment in excess of \$10,000,000. After initially defending under a reservation of rights, Cincinnati denied coverage and withdrew from the defense on grounds that there was no coverage owed.

The Moons filed suit in state court asserting claims for the bad faith failure to settle, statutory bad faith, breach of contract and related claims. The case was removed to federal court where the federal court judge granted summary judgment in favor of Cincinnati after the court initially "reserved ruling on the Moons' claim that Cincinnati voluntarily undertook duties to them while providing them with a preliminary defense and considering settlement proposals...."

The primary argument for coverage was that the Moons acted as the "real estate manager" for Shawn Moon's father. The district court concluded the Moon were tenants, not real estate managers. The fact they did some routine maintenance activities while tenants did not convert them into real estate managers under Georgia law. In fact, Shawn Moon's father testified he did not "consider his son and daughter-in-law to be real estate managers of his property. He was allowing them to live there to help them out." He purchased the home from them to help them avoid foreclosure.

In tragic cases such as this many courts attempt to find coverage. Likely a finding of coverage based upon the ambiguity argued for by the Moons, Cincinnati would have been faced with the potential for a very large bad faith judgment as well. However, the court set aside the sympathetic nature of the underlying claim and ruled based upon the contract language and the evidence which demonstrated they were not real estate managers, but rather were tenants in their own home which had been purchased by Shawn Moon's father to allow them to avoid foreclosure.

By Anthony L. Martin

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