

Summary Judgment Appropriate Absent Affirmative Misconduct to Support a Bad Faith Finding

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Summary: Metropolitan Property & Casualty Insurance Company (Metropolitan) denied Calvin's residential fire loss claim contending the policy was void because of material misrepresentations on the application and in the claims process. Metropolitan also claimed that it was an arson fire for which Calvin was responsible. Calvin counterclaimed alleging breach of contract, slander, tort of outrage, and bad faith. The Court granted Metropolitan's summary judgment finding Calvin had misrepresented his prior loss and also granted summary judgment on Calvin's bad faith claim. The 8th Circuit concluded there were fact issues preventing summary judgment regarding the alleged material misrepresentations justifying voiding the policy. Calvin had also appealed the district court's summary judgment in favor of Metropolitan on the breach of contract and bad faith claims. The breach of contract ruling was reversed regarding the insured's "alleged misrepresentation in failing to report the prior fire loss." However, the summary judgment on the bad faith claim was affirmed.

In Arkansas "a claim based on the tort of bad faith must include affirmative misconduct by the insurance company, without a good faith defense, and... the misconduct must be dishonest, malicious or oppressive in an attempt to avoid its liability under [the] insurance policy." *Aetna Cas. & Sur. Co. v. Broadway Arms Corp.*, 664 S.W.2d 463, 465 (Ark. 1984). Although Calvin raised arguments in opposition to the summary judgment ruling, the court found "no evidence ... to support the claim for bad faith." Although the court found Metropolitan had aggressively investigated the claim, there was "no evidence that Metropolitan's actions were dishonest, malicious, or oppressive." Metropolitan's denial of coverage due to the alleged misrepresentation on the application was a good faith dispute between the parties. For those reasons, the 8th Circuit concluded the summary judgment on the bad faith claim was proper.

Furthermore, Calvin's motion for partial summary judgment on Metropolitan's arson defense was properly denied. It might be difficult for Metropolitan to prove arson at trial, but the court was not convinced that the circumstantial evidence was so insufficient to entitle Calvin to judgment as a matter of law. The 8th Circuit did not say this, but that finding probably influenced the court's affirmance of the summary judgment on the bad faith claim.

The Calvin opinion demonstrates the difficulty of obtaining a summary judgment on a bad faith claim in Arkansas. Proving an insurance company's claim denial was "affirmative misconduct" which was "dishonest, malicious, or oppressive," is a difficult standard to meet at the summary judgment stage.

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