

BAD FAITH BLOG

Fairly Debatable Policy Term Precluded Bad Faith Liability

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Summary: A homeowner's insurer brought an action against the insured for declaratory judgment that liability coverage was barred by an exclusion for bodily injury resulting from use of a "jet ski." The insured counterclaimed alleging bad faith. The trial court found for the insurer on the bad faith claim after a first appeal found coverage was owed. The court held on the appeal of the bad faith ruling that the meaning of "jet ski" was ambiguous and fairly debatable, barring the bad faith action.

Fire Insurance Exchange v. Oltmanns

In 2006, the insured Oltmann piloted a personal watercraft when it was involved in an accident, injuring his brother-in-law. His brother-in-law brought a personal injury suit against Oltmann and successfully obtained a judgment. Oltmann demanded Fire Insurance Exchange defend and indemnify him under his homeowner's policy.

Fire Insurance reviewed the claim extensively in-house and eventually sent it to outside counsel for a coverage opinion. Outside counsel returned an extensive coverage opinion in which they opined that the term "jet ski" was synonymous with personal watercraft so that the claim was barred under a policy exclusion. Counsel opined Fire Insurance had a 75% chance of prevailing in a declaratory judgment action. Fire Insurance thereafter filed a declaratory judgment action against Oltmann.

The trial court granted Fire Insurance summary judgment agreeing with its interpretation of the policy. Oltmann appealed. On that first appeal, the court found the term "jet ski" in the policy was ambiguous and resolved the conflict in favor of the insured. Accordingly, the Court of Appeals reversed and remanded.

Fire Insurance and Oltmann then settled, but Fire Insurance refused to reimburse Oltmann for the attorneys' fees incurred in defending the coverage dispute. Oltmann counterclaimed in the still open declaratory judgment action for breach of the implied covenant of good faith and fair dealing in an attempt to get his attorneys' fees. The trial court granted Fire Insurance summary judgment on this counterclaim finding the meaning of the term "jet ski" was fairly debatable, thus defeating the bad faith claim.

On appeal the second time, the Utah Court of Appeals affirmed. The court explained “[d]enial of a claim is reasonable if the insured’s claim is fairly debatable.” That is because the insurer is entitled to debate a fairly debatable issue. The court found that although it had ruled in the insured’s favor on coverage, that outcome was based on the interpretative rule that ambiguous exclusions are to be construed in favor of the insured. The trial court’s ruling in favor of the insurer on the issue of coverage demonstrated to the Court of Appeals that the meaning of “jet ski” was fairly debatable so that a claim for bad faith was precluded. Outside counsel’s coverage opinion in favor of Fire Insurance also supported this conclusion.

The court additionally determined Fire Insurance had taken reasonable steps toward resolution by obtaining an extensive coverage opinion from outside counsel and seeking court interpretation. “[W]hen an insurance company proceeds in a reasonable way to resolve a difficult coverage question, its eventual loss at the appellate level does not foreclose a determination that an issue of interpretation was fairly debatable[.]” The court affirmed summary judgment in Fire Insurance’s favor on the bad faith claim.

By Katrina Smeltzer

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