SANDBERG PHOENIX

BAD FAITH BLOG

Montana Supreme Court: $300,000 Consent Judgment Proper

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Summary: The seller of a home was insured under a Homeowner's Policy and a Renter's Policy issued by United Services Automobile Association (USAA). Past basement problems, including flooding, were not disclosed by the seller. The basement flooded after the buyer took possession, and buyer sued the seller. After USAA denied coverage, the parties reached a settlement wherein a consent judgment was entered for $300,000 in favor of Huckins in the underlying case and Huckins then filed suit against USAA for breach of the duty to defend Van Sickle, breach of contract, common law and statutory bad faith, and punitive damages. The District Court held that USAA had not breached its duty to defend, as the claim was not an "occurrence," and the buyer appealed. The Montana Supreme Court reversed and held USAA had a duty to defend under the renter's policy.

Huckins v. United Services Automobile Association

USAA insured Barry Van Sickle with a homeowner's policy and a renter's policy. When Van Sickle was preparing to sell his home, he failed to disclose that the home had past problems with basement flooding. After purchasing the home, the buyer discovered the basement was flooded and brought suit against Van Sickle.

Upon receiving the underlying complaint from Van Sickle, USAA interviewed Van Sickle and his wife. Michelle Van Sickle explained they believed the non-disclosure form addressed current issues with the basement. They were also confused because the form did not address other problems they knew about the house that appeared on standard forms for home sales in Texas. Following this interview, USAA denied coverage on the grounds that (1) there was no "occurrence" under the policy and (2) the exclusion in the homeowner's policy "for damages 'arising out of your failure, intentionally or unintentionally, to disclose information regarding the sale or transfer of real or personal property.'"

After USAA denied coverage, Van Sickle and the buyer, Huckins, settled their case, and all claims against USAA were assigned to Huckins. In addition, they agreed upon a $300,000 consent judgment which was entered in the underlying case. At the District Court, in the enforcement case, summary judgment was granted for USAA on the ground that "the claim did not constitute an 'occurrence' as defined by the policies held by Van Sickle, and that USAA had therefore not breached its duty to defend under either the Homeowner's Policy or the Renter's Policy." The District Court had concluded there was no occurrence because Van Sickle had intentionally failed to disclose the basement problems on the standard form. Huckins appealed.

On appeal, the Montana Supreme Court first held that USAA had no duty to defend under the Homeowner's Policy. The Court held the failure to disclose exclusion clearly applied to the claims arising out of Van Sickles' failure to disclose the basement flooding problems in the standard form.

Then, the Court addressed whether there was a duty to defend under the Renter's Policy, which did not contain the failure to disclose exclusion. The Renter's Policy provided coverage "for damages because of … 'property damage' caused by an occurrence to which this coverage applies." "Occurrence" was defined as an accident resulting in property damage.

The Montana Supreme Court held, given the evidence of the confusion from the phone interview with the sellers, USAA had a duty to defend under the Renter's Policy. The Court noted that the duty to defend exists unless "there exists 'an unequivocal demonstration that the claim against an insured does not fall within the insurance policy's coverage." The confusion in the phone interview raised a legitimate question of whether the sellers intentionally failed to disclose the information, and by refusing to defend the sellers, USAA breached its duty to defend. The Montana Supreme Court described the failure to defend and claim denial as an "abandonment" of Van Sickle which justified entry into the "stipulated settlement." The consequence was to make USAA liable for "defense costs and [the] judgment[s]."

In concluding its opinion, the Montana Supreme Court stated "[w]hen an insurer defends the insured, it also defends itself against a duty to defend claim. Here, USAA failed to do so." The Court added the safest "course of action for the insurer is to defend under a reservation of rights and file a declaratory action to resolve the coverage question." Montana insurers and insurance practitioners should be aware of and heed this advice.