

BAD FAITH BLOG

# Admitting and Correcting Errors Saves Insurer

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Summary: The United States District Court in Arizona held that an insurer, which admitted and rectified errors in calculation of the actual cash value of a homeowner's property damage claim after the error was brought to its attention by the insured, did not commit bad faith.

Echanove v. Allstate Ins. Co. 752 F.Supp.2d 1105

The plaintiff-insured filed a homeowner's insurance claim with its insurer, Allstate. The insured experienced property damage to his property caused by a wind storm. An independent adjuster inspected the insured's property and based on his inspection, Allstate made a payment to the insured for property damage in the amount of \$15,723.65. Two additional upward adjustments were requested by the insured and they were paid by Allstate, bringing the total payment to \$16,792.12. The insured was paid less than 30 days after the damage was reported.

Later, the insured hired a public insurance adjuster who asserted that errors were made in the depreciation calculation in determining actual cash value of the claim and advised the insured to file a civil action against Allstate, which the insured did. Upon notice of the lawsuit, Allstate learned for the first time of the asserted depreciation mistake. Allstate sought review by the manager of an independent adjusting company, who prepared a revised depreciation resulting in an amount due to the insured of an additional \$2,579.72. This amount was tendered to and accepted by the insured.

Cross motions for summary judgment on the breach of contract and bad faith claim were filed. The District Court found Allstate did not breach the insurance contract because there was no proof that Allstate denied the insured any of the benefits for which the insured was entitled under the insurance policy. In addition, the District Court found that the insured never complied with the notice provision of the homeowner's insurance policy before pursuing litigation raising the alleged problem with the estimate, the actual cash value payment or any additional payments.

The District Court also found Allstate had not committed bad faith. Allstate admitted to making and rectifying errors after the problem came to its attention. There was no evidence that the calculation errors Allstate made at any point were made intentionally or maliciously. Therefore, there was insufficient evidence for a reasonable trier of fact to conclude that Allstate acted in bad faith. The District Court noted an insurer's "honest mistake, bad judgment or negligence" does not constitute bad faith. Having found Allstate did not act in bad faith, the District Court also denied the insured's claim for punitive damages. There was no evidence that would support a claim for punitive damages because Allstate had not acted with an evil mind or acted with an intent to injure its insured or knowing of a substantial risk of harm to its insured.

The insurer prevailed in this case because when it learned of its mistake in calculating and adjusting the homeowner's claim, it corrected the mistake and promptly made payment to the insured. Also, the insured rushed to file a lawsuit against Allstate without first complying with the notice provision in the homeowner's policy, which included making a written demand for an appraisal. Thus, the District Court correctly found this was not a case where the insurer committed bad faith.

By Aaron French

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