

BAD FAITH BLOG

# No Penalty for Wrong Coverage Decisions

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**Summary:** The Trust owned a building in Galena, Illinois which was leased to an architect and artist. When the Trust sold the real estate, it removed and destroyed artwork and other personal items without the artist's permission. He filed suit in federal court under multiple theories for wrongfully evicting him without proper notice and the destruction of his personal items without compensating him. After Country Mutual denied duties to defend and indemnify, the Trust filed a declaratory judgment action. The trial court found coverage, but denied plaintiff's motion for sanctions under Illinois' vexatious refusal statute. The appellate court affirmed finding Country Mutual had a duty to defend the federal lawsuit under the policy's personal and advertising injury coverage, but vexatious penalties were properly denied.

The federal court complaint alleged violations of the Illinois Forcible Entry and Detainer Act by evicting the tenant and disposing of his personal items and failed to compensate him for their value. The policy's Personal and Advertising Injury coverage provided coverage for "wrongful eviction," a term defined in Black's Law Dictionary. Because "the plain and ordinary meaning of 'eviction' is to deprive a tenant of the right to enjoy leased premises," the policy included coverage for property damage resulting from disposing of the tenant's property.

The court rejected Country Mutual's argument that the breach of contract exclusion applied concluding it was too vague to apply to the lease. The court ruled that "generically excluding coverage for a breach of contract would [not] convey to the average, normal, and reasonable person that a wrongful eviction involving a lease agreement would be excluded from coverage." Additionally, "construing the breach of contract exclusion to apply to wrongful eviction involving leases would compete with an equally reasonable construction that all wrongful evictions, regardless of whether a lease agreement is involved, would be covered." Given those two reasonable constructions, the court construed the policy against Country Mutual.

The cross-appeal seeking the imposition of a Section 155 penalty and sanction against County Mutual also failed. Although Section 155 allows awards for attorney's fees and costs when an insurance company's refusal to comply with its policy obligations is "unreasonable and vexatious," an insurance company is not liable for fees and costs for litigating and losing an insurance coverage issue "if a *bona fide* dispute existed regarding insurance coverage. In those circumstances the delay in settling the claim does not violate Section 155." An Illinois trial court "must consider the totality of the circumstances, including the insurer's attitude, whether the insured was forced to sue to recover, and whether the insured was deprived of the use of her or his property." After reviewing the trial court's ruling on an abuse of discretion standard of review, the court found no abuse of discretion in denying the Section 155 sanctions request. Although noting it agreed with the Trust's coverage position, the court noted "Country Mutual reasonably believed that the policy did not cover such harm." The court distinguished an earlier opinion upon which Country Mutual relied, but also noted that case "clearly provided Country Mutual with a *bona fide* reason to challenge coverage."

The *Doyle Trust* case shows that insurers in Illinois are entitled to contest coverage any time they have a "*bona fide* reason to challenge coverage." Furthermore, unless the trial court judge's ruling granting or denying Section 155 sanctions is an abuse of the court's discretion, its ruling will be affirmed on appeal.

By Anthony L. Martin

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