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BAD FAITH BLOG

New York Has No Independent Bad Faith Tort

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Summary: Aaron Cohen (Cohen) was injured while working for UPI while operating a mixing machine. Cohen filed suit against UPI, Hastings Development ("Hastings"), and other defendants. Hastings filed a declaratory judgment and bad faith case in federal court after Evanston Insurance Company ("Evanston") denied coverage under the Employers Liability Exclusion and reserved its rights under the "Designated Operations Coverage." The Court found coverage under the policy, but ruled Hastings had no bad faith claim.

Hastings Development LLC v. Evanston Inc. Co.

The Court first found the Employers Liability Exclusion was subject to two reasonable interpretations presented by Hastings and Evanston rendering the exclusion ambiguous as a matter of law. Hence, the Court granted summary judgment in favor of Hastings in light of New York's "*contra proferentem* rule"; any ambiguity should be resolved in favor of the insured. Because the Employers Liability Exclusion was ambiguous as a matter of law, the Court entered declaratory judgment on the plaintiff's motion for summary judgment requiring Evanston to provide coverage to Hastings for the Cohen action.

The Court also granted summary judgment to Evanston on Hastings' bad faith claim. Hastings sought to recover "consequential, incidental and punitive damages including, but not limited to costs, disbursements, judgments, awards, settlements and legal fees," but the Court ruled "plaintiff's bad faith claim fails as a matter of law." "[T]here is no independent tort for breach of the contractual covenant of good faith and fair dealing under New York law."

In addition, plaintiff's bad faith claim failed as a matter of fact. The alleged basis for the bad faith claim was Evanston's denial of coverage based upon the Employers Liability Exclusion. Because both parties relied upon a reasonable interpretation of that exclusion, "even construing the allegations in the complaint as true, a reasonable jury could not find anything other than [Evanston's] denial of coverage was based in its good faith reading of the policy. Accordingly the Court finds that the plaintiff's bad faith claim fails as a matter of law."

The *Hastings* case is presently on appeal to the Second Circuit. Nevertheless, *Hastings* follows a long line of New York federal and state court cases holding that in New York "there is no separate, generalized tort claim for bad faith denial of insurance" and New York fails to recognize a "separate cause of action in tort for an insurer's bad faith failure to perform its obligations under an insurance policy."

By Anthony L. Martin

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