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BAD FAITH BLOG

No Act of God Here; Massachusetts' Appeals Court Awards EC Damages to Claimants for Insurer's Failure to Properly Investigate and Timely Settle

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Summary: Insured's judgment creditors brought action against liability insurer to recover for unfair insurance settlement practices in connection with claim for damage to plants from salt water drawn from well drilled by insured. The trial court, after a six-day bench trial, entered judgment in favor of creditors and awarded attorney fees and expenses. Parties filed cross appeals and Appeals Court affirmed in part, reversed in part, and remanded.

McLaughlin v. American States Ins. Co.

Harrington, the insured, was a subcontractor who was hired to drill a well for the McLaughlins, judgment creditors, to support an irrigation system for their substantial landscaping. Harrington failed to obtain a required municipal permit before drilling the well. Harrington also failed to timely submit a well completion report as required by state law. After completing the well in April, 2003, Harrington taste-tested the water and determined it was fresh and his work was complete. While Harrington was aware wells similar to the one he drilled for the McLaughlins were susceptible to turning from fresh water to salt water, he did not regularly test the water after completion of the well, nor did he inform the McLaughlins of the possibility.

In the months following the well installation, the ornamental landscaping plantings began to show distress and eventually died by August 2003. The McLaughlins identified the cause of the damage as salt water produced from the well. Through the builder of their home, the McLaughlins submitted a claim to Harrington's insurance agent on October 22, 2003, which included an invoice in the amount of $28,224.62 for the initial plants killed by salt water. The claim reached ASIC, Harrington's liability insurance, on November 3. The assigned adjuster, Dresner, sent a letter to the McLaughlins on November 4 and recorded a statement from Harrington on November 5. Harrington claimed the transition from fresh water to salt water was an "act of God." Even though Dresner only had the authority to settle claims up to $10,000, she did not inform a supervisor of the McLaughlins' claim.

Dresner took no further action on the claim until late January, 2004, when the McLaughlins' insurance agent called to inquire about the claim. Dresner received McLaughlins' phone number from their insurance agent and she then called the McLaughlins. Dresner sent Harrington a letter requesting documents concerning the well. No further action was taken until February 19, 2004, when the McLaughlins' agent called ASIC. The agent was allegedly treated with hostility by a different ASIC agent. McLaughlin then called the next day and was informed by the same ASIC agent that he believed Harrington was not liable. However, ASIC had yet to send a claims adjuster to inspect the plants and informed the McLaughlins it did not intend to do so. Following the phone call, McLaughlin sent ASIC more documentation (including photographs) of the damage to the plants, as well as additional invoices totaling $37,475.24.

Two weeks later, Dresner told her boss, Tedesco, about the claim. Harrington had still not provided documentation to support his defense to the claims. Tedesco, who was more experienced, advised several avenues of investigation Dresner should pursue. In April 2004, Tedesco transferred the claim to a different adjuster, Fox. Fox sent an independent claims adjuster to the property. The adjuster submitted a report in May 2004, documenting the damage to the plants and his finding the damage had been caused by salt water produced by the well. ASIC continued the investigation, ultimately deciding to deny the McLaughlins' claim in June, 2004. However, ASIC's attorney never advised the McLaughlins' attorney of the denial. On February 1, 2006, the McLaughlins commenced an action against Harrington, the irrigation subcontractor, and the general contractor. Prior to trial, the subcontractor and general contractor each settled with the McLaughlins for $50,000. Harrington was found liable by a jury, but was able to offset the entire award with the settlement the McLaughlins had already received.

In June 2007, the McLaughlins commenced an action against ASIC claiming unfair insurance settlement practices. Following a six-day bench trial, the trial judge found ASIC failed to conduct a prompt, thorough, and objective investigation. The trial judge also found Harrington's liability was reasonably clear by May 2004 when it received its independent adjuster's report, but ASIC failed to make a reasonable offer to settle for several years thereafter. With regards to damages, the trial judge found the McLaughlins were entitled to reasonable attorney's fees and expenses incurred in the prosecution of their claim against Harrington. The trial judge did not award multiple damages and did not award damages based on the McLaughlins' loss of use of funds from date liability became reasonably clear. Both parties appealed.

The appeals court affirmed the trial court's conclusion that Harrington's liability and the damages arising from his actions were reasonably clear as of May 2004. The court also affirmed the determination that ASIC failed to conduct a reasonable investigation. The key to this finding was the failure to subject Harrington's denial of liability to serious scrutiny and basic fact checking.

The appeals court also affirmed the decision to award the McLaughlins' attorney's fees and expenses they incurred in prosecution of their underlying tort suit against Harrington, the subcontractor, and the general contractor. Under Massachusetts law, if an insurer's protracted delay in settling an underlying tort case causes the plaintiff to proceed to trial, the plaintiff can recover attorney's fees and expenses incurred in that suit from the insurer.

The McLaughlins also argued on appeal they should have been awarded an amount to compensate them for the loss of use of the funds that ASIC should have made available to them once Harrington's liability became clear. The appeals court, reversed, found for the McLaughlins on this issue, reasoning the McLaughlins were entitled to damages from the time Harrington's liability became reasonably certain to the date the McLaughlins received settlements from the subcontractor and general contractor. While the McLaughlins were not awarded multiple damages (which were available under Massachusetts unfair settlement practices statute) by the appellate court, they did receive attorney's fees for the appeal. The trial and appeals court did not award multiple damages under the statute because the trial judge, in his discretion, found the insurer's actions were not knowing, willful, reckless or in bad faith.

It is important to note the insurer was slow to respond to the McLaughlins and failed to promptly investigate the claims of its own insured. Had it done so, it might have been able to avoid this litigation. Due to its actions, the insurer was liable not only for the underlying claim that it should have paid in the first place, but also for the value associated with the time period the McLaughlins were unable to use the funds they should have received for the claim. Additionally, the insurer was liable for the attorney's fees and expenses associated with pursuing the claims against the insured. These additional costs could have been avoided by the insurer spending the extra time (and money) to scrutinize its insured's claim the damage was "an act of God."

By Aaron D. French and Kevin Smith

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