

BAD FAITH BLOG

Insureds Did Not Establish Consequential Damages to Support Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing

AUTHOR: KATRINA L. SMELTZER

The Tenth Circuit Court of Appeals affirmed the trial court's grant of summary judgment in favor of the insurer, USAA, finding the insureds failed to establish damages to support their claim for breach of the implied covenant of good faith and fair dealing. Specifically, the court found the insureds failed to establish unusual emotional distress, recoverable attorneys' fees, or recoverable diminution in value damages that could independently support the claim.

Blakely v. USAA Cas. Ins. Co.

Mr. and Mrs. Blakely owned a home in Bountiful, Utah, which was insured under a homeowner's policy issued by USAA. In August 2002, a fire broke out in the basement of the home after a flooring contractor applied a flammable sealant. Although the fire was contained to the basement, smoke and soot damaged other sections of the home, including floor joists, exposed subflooring, and personal property.

The Blakelys made a claim under their USAA policy. By mid-2003 USAA had paid \$47,789.94 for the repair to the home performed by USAA's preferred contractor, \$37,832.20 for personal property, and \$7,709.56 for temporary housing. However, the Blakelys were dissatisfied with the repairs of their home and the extent to which their personal property had been cleaned or replaced. When USAA refused to authorize additional expenses, the Blakelys paid for further cleaning and repairs themselves.

Thereafter, the Blakelys invoked their contractual right to an appraisal. In October 2005, the appraisers retained under the policy's terms awarded the Blakelys \$291,356.52. The Blakelys claimed they were entitled to \$468,575.05. USAA paid the remaining amount of the appraisal award.

In 2006, the Blakelys filed suit against USAA claiming breach of contract, breach of the implied covenant of good faith and fair dealing, breach of industry and statutory standards, and intentional infliction of emotional distress. The Blakelys agreed they were not owed anything further on the claim, but alleged they suffered from financial and emotional damages resulting from USAA's failure to make adequate and timely repairs, reimbursements, and investigations.

After a second remand, the trial court granted USAA summary judgment on all of the Blakelys' claims. The trial court granted USAA summary judgment on the implied covenant claim finding the Blakelys had failed to establish damages to support the claim. Specifically, the trial court ruled the Blakelys' claim for damages from emotional distress, including aggravation of medical conditions, diminution in the value of their home, and attorneys' fees and costs were not recoverable for breach of the implied covenant. The Blakelys appealed for the third time claiming error only in the trial court's grant of summary judgment on the implied covenant claim.

On appeal, the Tenth Circuit Court of Appeals first examined Utah state law on the topic, finding Utah courts have stated "an insurer's 'implied obligation of good faith performance contemplates, at the very least, that the insurer will diligently investigate the facts to enable it to determine whether a claim is valid, will fairly evaluate the claim, and will thereafter act promptly and reasonably in rejecting or settling the claim.'" The covenant of good faith and fair dealing is not confined to the obligations imposed by the contract itself. While the court noted a claim for breach of the implied covenant could include consequential damages, such as emotional distress, it must be damages reasonably within the contemplation of the parties at the time the insurance contract was made.

The court found the claim for aggravated medical conditions was forfeited by the Blakelys for not being properly pled. The court further found emotional distress damages were only recoverable in 'unusual' cases, and the Blakelys had not established an unusual case. The court found their claim for emotional damages was prototypical of the disappointment, frustration, or anxiety normally experienced in the process of filing an insurance claim and negotiating a settlement with an insurer. The court further found the Blakelys' claimed distress regarding USAA's replacement of their custom furnishings with mediocre replacements and lowball adjustments were only disappointment with the evaluative process, which was foreclosed from recovery because of the appraisal. As for the criticism of the home repairs and cleaning, the court faulted the Blakelys for waiting three years to invoke the appraisal process.

Next the court ruled the Blakelys could not seek reimbursement for their portion of the appraisal process because these costs were specifically addressed by the insurance policy, and the court could not override the policy.

The court then concluded the additional attorneys' fees incurred by the Blakelys to pursue the case against the contractor, the appraisal process, and this case against USAA were not reasonably foreseeable damages that could be recovered, and although recovery of attorneys' fees in a successful first-party action was available, it could not advance a theory of damages for breach of implied covenant. Damages must stand independent of those recoverable attorneys' fees, and they did not here.

The court also concluded because the Blakelys had been paid the appraisal amount they were foreclosed from seeking damages for diminution of value of the home. The court was not persuaded by the Blakelys' argument they were forced to use the appraisal amount to pay attorneys to pursue USAA instead of fixing the home. The court affirmed the district court's grant of summary judgment in favor of USAA.

The Tenth Circuit Court of Appeals affirmed the trial court's grant of summary judgment in favor of USAA.

Justice Bacharach dissented. The dissent determined under the same legal backdrop as the majority opinion that a jury could find the Blakelys had presented evidence of damages of emotional distress surpassing the mere disappointment, frustration, or anxiety that commonly arises when seeking insurance proceeds. The dissent further found when entering into the insurance agreement, the parties could have foreseen emotional distress damages arising from the insurer's bad faith, as the agreement was meant to provide security and peace of mind by insuring the Blakelys' most intimate space—their home. The dissent similarly held a jury could reasonably find the Blakelys had establish other damages, such as lost income, attorneys' fees that would have been unnecessary if USAA had acted in good faith, and diminution in value of their home.

Thus, while the court acknowledged insurance claims can be generally frustrating and an emotional process for the insured -- especially when involving a personal claim, such as a homeowners' claim -- the court held the insurer is not liable unless such emotional distress is unusual or extra-ordinary.