

BAD FAITH BLOG

# Insured Ordered to Pay Attorney's Fees to Insurer for Prosecuting Frivolous Appeal

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Homeowners David and Kristina Parks, brought an action against Safeco Insurance Company alleging breach of contract and bad faith in handling the claim after a wildfire destroyed their house. Safeco then hired an appraiser to determine the actual cash value ("ACV") of the destroyed house who determined the ACV to be \$169,000. Safeco paid that amount five days after the determination. Safeco also advised the Parks of their options for recovering the full replacement cost. Safeco estimated that it would cost \$440,195.55 to replace the home using equivalent construction. Safeco also informed the Parks that Safeco would "pay the replacement cost of the dwelling up to \$440,195.55 or the amount actually incurred, whichever is less."

*Parks v. Safeco Ins. Co. of Ill.*

The Parks then purchased a replacement house for \$300,000 (house structure valued at \$255,000 and land valued at \$45,000). They informed Safeco of the purchase and demanded \$440,195.55. Two weeks within receiving the necessary documents for reimbursement procedures, Safeco mailed the insured a check for \$86,000. This amount, in addition to the original \$169,000 provided to the insured, represented the cost of the replacement home (\$255,000). The Parks then brought suit for breach of contract and bad faith. The district court found for Safeco on its motion for summary judgment and the Parks' appealed.

The Supreme Court of Idaho determined Safeco fulfilled its obligation under the policy because Safeco paid \$255,000, which was the amount actually and necessarily incurred to replace the destroyed home. This language was clear and unambiguous, so the Safeco payment fulfilled its contractual duties under the policy.

The Parks further argued Safeco acted in bad faith by "paying the ACV and withholding further payment" until they purchased a replacement house. Safeco claimed it complied with the policy and with Idaho law. It paid them promptly once Safeco was able to determine their loss. Under the policy, Safeco had thirty days to reimburse the Parks. The Idaho Supreme Court explained that under Idaho law, a "duty under a contract must be breached in order to find bad faith." Because Safeco did not breach any duty under the policy, it was not possible to find Safeco acted in bad faith.

The Idaho Supreme Court also awarded Safeco attorney's fees on appeal. Safeco won attorney's fees on appeal because the insured's arguments were "unreasonable and lacked foundation." The policy was unambiguous and Safeco communicated, on multiple occasions, the various options the insured had for replacing their home. One justice disagreed their arguments were frivolous, but all agreed Safeco complied with its policy.

The *Parks* case teaches that an Idaho insurer cannot face liability for bad faith if it performs all of its contractual duties. An insurer wishing to avoid bad faith claims should therefore maintain clear and unambiguous policy language, while also performing all duties required under the policy with a first-party insured. The case also teaches the danger of pursuing findings of coverage and bad faith in the face of unambiguous, contrary policy language.