

New Jersey District Court Grants Summary Judgment To Insurers Holding That Policy Language Was Unambiguous And Insurer Had Valid Grounds To Delay Paying Plaintiffs Claim

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On June 27, 2011, the United States District Court for the District of New Jersey granted summary judgment to The Hartford Financial Services Group Inc. ("Hartford") and Twin City Fire Insurance ("Twin City") for claims of bad faith, breach of contract and declaratory judgment brought by Plaintiff, Peter Tucci in Tucci v. The Hartford et. al., Docket No. 08-4925.

The court held that language in both the Hartford and Twin City policies, when viewed in the entirety, was unambiguous and should be given its plain meaning. Furthermore, that Hartford's delay in paying Plaintiff's claim was "undisputably based on valid or at least debatable reasons" and accordingly, there was no bad faith. This ruling provides measurable support under New Jersey law to insurers defending similar issues of policy interpretation, as well as bad-faith claims related to delayed payment.

In this declaratory judgment action, Plaintiff sought coverage under Hartford and Twin City policies related to damage caused by a lessee of hotel property owned by Plaintiff. Northeast Hospitality Properties ("Northeast") had leased the hotel from Plaintiff, and sublet the property to Vraj Brig PA, LLC. In 2006, Plaintiff evicted Northeast for failure to maintain adequate insurance. In preparation for the eviction, Northeast and Vraj Brig removed all property within the hotel, causing damage and allegedly making the hotel uninhabitable. Plaintiff sought coverage for damage to the property as well as loss of business income amounting to over \$3 million.

The first issue before the Court was an alleged ambiguity in the \$1 million business income coverage limit of liability. Specifically, Plaintiff argued that the placement of the business income limit on the second page of a two page endorsement could be confused with the larger total coverage limit of \$19,442,900 prominently displayed on the middle of the first page of the endorsement. The Court disagreed, finding that the section was unambiguous and stating that while the section is "mildly confusing" because it spans multiple pages, the average policyholder reading the entire text would eliminate any confusion as to the appropriate limits under the policy.

Additionally, the Court granted summary judgment to Hartford dismissing Plaintiff's bad faith claim for the delay in making payments on the claim. The Court held that Hartford had potentially valid reasons to delay payment because: (1) it was undisputed that Plaintiff refused to provide reasonable documentation requested by Hartford to verify Plaintiff's claims; and (2) Plaintiff's multiple previous attempts to recover for losses not covered under the policy presented ample

justification for Hartford's caution in processing the claims, stating, "Plaintiff cannot unilaterally determine when the insurer has enough information and refuse thereafter to cooperate with the insurer's reasonable requests for material, substantiating information."

Finally, the Court also granted summary judgment to Twin City, holding that an intellectual property exclusion in the Twin City policy was unambiguous. The Twin City policy excluded coverage for "personal and advertising injury arising out of any violation of any intellectual property rights." Plaintiff contended that because the exclusion only applied to "violations," the exclusion did not apply because Plaintiff was ultimately vindicated on the claim against it for trademark infringement. The Court disagreed, stating that Plaintiff's position "would result in the absurd implication that the insurer would be forced to defend every intellectual property claim . . . until the end of the case." The Court determined that Plaintiff's interpretation of the exclusion was not reasonable and Twin City was correct in not providing a defense.

Should you have any questions regarding this decision, please contact Robert J. Re.