

Superior Court, Los Angeles County, California.

Amerigraphics vs. Mercury Casualty Company

TOPIC:

Synopsis: **Insurance** company negotiated flood damage claim in bad faith

Case Type: **Insurance**; Bad Faith & Coverage; **Insurance** ; Commercial Policy; Contracts; Breach; Fraud & Misrepresentation; Fraud

DOCKET NUMBER: BC331524

STATE: California

COUNTY: Los Angeles

Verdict/Judgment Date: February 20, 2008

JUDGE: [Mary Ann Murphy](#)

ATTORNEYS:

Plaintiff: James Osborne, Law Offices of James Osborne, Sherman Oaks; [W. Todd Stevenson](#), Law Offices of Todd Stevenson, Sherman Oaks.

Defendant: [Thomas J. Dowling](#), Hager & Dowling, Santa Barbara; [Karen M. Harmeling](#), Proctor, McCarthy & Slaughter, Ventura; Spencer C. Skeen, Procopio, Cory, Hargreaves & Savitch, San Diego; [William M. Slaughter](#), Proctor, McCarthy & Slaughter, Ventura.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$3,130,000

Range: \$2,000,000-4,999,999

\$130,000 compensatory; \$40,000 interest; \$3,000,000 punitive. The jury returned a special verdict of fraud and breach of the implied covenant of good faith and fair dealing against defendant. Five jurors on the panel who had automobile policies of **insurance** with defendant voted for the verdict against their own **insurance** company.

Deliberations: Not reported.

Jury Poll: 12-0.

EXPERTS:

Plaintiff: [David F. Peterson](#), J.D., attorney/**insurance** claims expert, Brown & Peterson, Oak View, (805) 649-8557.

Defendant: Gail Montoure, CPCU, CLU, FLMI, , Las Vegas, NV, (702) 617-1390.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Plaintiff: Plaintiff Amerigraphics Inc., a small three-person, high-end graphic design and printing business, sued, inter alia, its property **insurance** carrier, Mercury **Insurance** Company, for failing to provide coverage for business property and normal operating expenses ("NOE") suffered as a result of a small flood from a ruptured water heater on the second floor of their leased building, which leaked to the first floor of their building on Ventura Boulevard in Sherman Oaks, California. During the remediation process, mold caused by the water was discovered, and plaintiff had to relocate to the second floor of another building in an adjacent town.

Despite being informed that the electrical systems of plaintiff's scanner and large-format printer were permanently damaged and not repairable, defendant Mercury **Insurance** took possession of the equipment and did not return it or replace it for over 650 days. During that time, plaintiff's business dried up. Defendant Mercury **Insurance** paid plaintiff approximately \$73,000 for covered items but, importantly, failed to advise plaintiff that there was coverage for NOE.

The **insured** discovered coverage existed for NOE after discussing the problem 15 months past the loss with his agent. After writing to the CEO of Mercury three times asking for assistance, plaintiff sued defendant for not disclosing the existence of coverage for NOE of \$90,000, for delaying payment for two years of \$23,000 out of a \$45,000 claim for tenant improvements, and for not repairing the printer and scanner.

At trial, defendant could not and did not dispute that plaintiff had coverage under the business policy for NOE that was never paid. Defendant claimed that the payment of \$23,000 was reasonable, despite the fact that its outside adjustor had recommended \$45,000. Defendant also claimed that the printer and scanner had been timely repaired and that plaintiff refused to pick up the equipment because it wanted to go out of business.

At trial, defendant's senior vice-president of claims, Jo Anna Moore, admitted that defendant had no property claim handling guidelines for 2003 to 2004, in clear violation of California state law, which required all **insurance** carriers to maintain guidelines for the prompt processing of **insurance** claims ([10 Cal.C.Regs. 2695.7\(p\)](#); [Insurance Code § 790.03\(h\)\(3\)](#)). Moore was also forced to admit that in 2003-2004, defendant's own internal training guidelines taught claims adjustors to "never use your top dollar to begin negotiations," "to use time as your ally," and to "remind claimants that a judge or jury would find them at comparative fault" if they sued. Moore also testified that when she became vice-president of defendant, those guidelines were "withdrawn."

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to Plaintiff: Not reported.

SETTLEMENT DISCUSSIONS

According to Plaintiff: Demand: \$850,000, increased to \$1,100,000 ([CCP § 998](#)). Offer: None. The mediator was the Hon. Robert M. Letteau (Ret.) of ADR Services Inc.

EXPERT TESTIMONY

According to Plaintiff: Plaintiff's expert, David Peterson, Esq., opined that defendant's actions were not within the standard of care in the insurance industry because defendant (1) failed to timely investigate or evaluate the claim, (2) used improper and non-existent standards to deny the claims, (3) unreasonably delayed payment of the claim, (4) failed to advise plaintiff of existing coverage, and (5) failed to comply with state regulations, which required the carrier to have property claims handling guidelines for 2003-2004.

COMMENTS

According to Plaintiff: Thomas J. Dowling represented defendant Mercury Casualty Company. William M. Slaughter and Karen M. Harmeling represented defendant Gregory Bloom. Spencer C. Skeen represented defendant Hi-Tech Restoration. Defendant Bloom settled with plaintiff before trial, and defendant Hi-Tech Restoration was dismissed before trial. Gail Montoure was listed as a defense expert, but no further information was provided. James Osborne provided the information for this report.

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Los Angeles County Superior Court/Downtown

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