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Superior Court, San Diego County, California.

Summit Consulting & Architecture vs. Evanston **Insurance** Company

TOPIC:

Synopsis: SETTLEMENT -- Company involved in lawsuit alleges **insurance** company breached contract to defend
Case Type: Contracts; Breach; **Insurance**; Bad Faith & Coverage; **Insurance**; Commercial Policy

DOCKET NUMBER: 37200700064986

STATE: California

COUNTY: San Diego

Verdict/Judgment Date: December 10, 2007

JUDGE: [Richard E. L. Strauss](#)

ATTORNEYS:

Plaintiff: Cheryl L. Gustafson, Quade & Associates, San Diego; [Michael W. Quade](#), Quade & Associates, San Diego.
Defendant: [John M. Hochhausler](#), Lock, Lord, Bissell & Liddell, Los Angeles; [Traci S. Lagasse](#), Andrews, Lagasse,
Branch & Bell, San Diego; [Susan J. Welde](#), Lock, Lord, Bissell & Liddell, Los Angeles.

SUMMARY:

Verdict/Judgment: Settlement

Verdict/Judgment Amount: \$1,850,000

Range: \$1,000,000-1,999,999

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Plaintiff: On or about April 1, 2005, plaintiffs Summit Consulting & Architecture and Michael Kiss purchased a written Architects and Engineers Professional Liability policy of **insurance**. On or about December 20, 2005, plaintiff Summit was named as a defendant in an action entitled Rogers v. Watermark Owners Association. After being served with the summons and complaint in the Rogers action, plaintiffs tendered the defense of the action to defendants Evanston **Insurance** Company, Shand Morahan & Company, and Markel Corporation.

Defendants acknowledged receipt of the tender of the defense, but denied coverage for the Rogers action. The denial was based primarily on an alleged mold exclusion in the policy. Based on the denial of coverage, plaintiffs subsequently retained defense counsel, at their own expense, in order to defend themselves in the ongoing Rogers action.

Throughout the calendar year 2006, plaintiffs participated in and engaged in significant discovery and law and motion matters in preparation for trial in the Rogers action. All litigation was at plaintiffs' own expense.

On or about November 6, 2006, plaintiffs re-tendered their defense, outlining the current case posture of the Rogers action; outlining non-mold-related activities performed by plaintiffs; again requesting reimbursement for defense costs; and again requesting that defendants pay an indemnity settlement. Defendants also denied the re-tender.

Plaintiffs alleged breach of contract and breach of the covenant of good faith and fair dealing. Specifically, plaintiffs alleged that defendants did no meaningful investigation of the claim and failed to consider other potentially covered claims, relying solely on a mold exclusion.

Plaintiffs further alleged that defendants failed to consider in their scope of review available litigation materials from the Rogers action, even after plaintiffs re-tendered and put defendants on notice of potentially covered claims.

Defendants argued that the mold exclusion in the policy barred coverage for all claims, and, thus, there was no coverage. Defendants further argued that the parent company and claims representative were not proper parties to the action. Defendants disputed plaintiffs' valuation of the stipulated judgment. Defendants filed a motion for summary judgment on the coverage issues.

CLAIMED INJURIES According to Plaintiff: Emotional distress.

CLAIMED DAMAGES According to Plaintiff: Plaintiffs presented evidence of attorney fees and litigation costs in the Rogers action of \$155,000; \$250,000 lost business revenue; \$730,000 stipulated judgment; and emotional distress damages.

SETTLEMENT DISCUSSIONS According to Plaintiff: Prior to mediation, plaintiffs demanded \$17 million to settle the

matter, and defendants made a [CCP § 998](#) offer to compromise for \$730,001. Plaintiffs and defendants negotiated a settlement of \$1,850,000 approximately nine months after filing the complaint. The mediator was Robert Kaplan, Esq.

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