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Insured's Bad Faith Lawsuit is Revived after the Washington Court of Appeals Interprets Ambiguous Insurance Terms against the Insurer

From the Desk of Josh P. Hayward: Washington law permits insureds to bring bad faith actions against insurers when claims made under their insurance policies are denied. Occasionally, these lawsuits focus on the interpretation of insurance policies and can possibly lead to increased damages if the insurer wrongfully denied claims. What if the insurance company denies coverage based on language that the court deems ambiguous? May the insurance company be subjected to bad faith? Read on to find out.

Claims Pointer: In this bad faith lawsuit, The Washington Court of Appeals interpreted an insurance policy to determine whether an insurer was required to cover the costs incurred by its insured who rebuilt a similar structure after a fire. The court of appeals found that the language relied upon to deny coverage to the insured was ambiguous. Once the court found that the language was ambiguous, it construed the language *against* the drafter. Accordingly,, the insurer was subject to a bad faith denial of coverage. This case serves as an important reminder that Washington courts consistently favor the insured in disputes against insurers. When contemplating denying an insured's claim, it is important to ensure that the language relied upon is unambiguous. If there is any question, seek legal advice.

Poole v. State Farm, 2018 Wash. App. Lexis 2851 (Dec. 18, 2018).

In 2014, Michael and Vicky Poole's ("the Pooles"') home, attached shop, and separate barn—all insured under a State Farm homeowner's policy—burned to the ground. The Pooles began construction on replacement structures and sought compensation under their homeowner's policy. State Farm accepted coverage for the Pooles' replaced home and barn but denied coverage for the Pooles' new shop. State Farm denied coverage based upon its contention that the original shop was *attached* to the home, whereas the Pooles' new shop was *detached* from the home. The Pooles filed a bad faith lawsuit against State Farm, asserting that it breached its insurance contract by, among other things, refusing to cover the costs of building the stand-alone shop.

In response to the Pooles' lawsuit, State Farm filed a motion for summary judgment. It argued that the following provisions of the homeowner's policy precluded coverage. First, the policy provided that State Farm "will pay the cost to repair or replace with similar construction and for the same use on the premises…the damaged part of the property covered under…**COVERAGE A – DWELLING**." In turn, the definition of dwelling included "structures attached to the dwelling[.]" Accordingly, State Farm argued that, while the Pooles' *attached* shop was covered as an attached structure, the Pooles' proposed *stand-alone* shop was not covered under the replacement cost loss settlement provision requiring "similar construction." The superior court granted State Farm's Motion for Summary Judgment on coverage for the stand-alone shop. The Pooles appealed.

The court of appeals reviewed the superior court's decision by interpreting the homeowner's policy in the same manner and method by which it would interpret a contract. First, the court gives terms undefined by the insurance contract

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their ordinary and common meaning. Second, the insurance contract is construed as a whole, with the policy given the same understanding as the average person purchasing insurance would possess. Third, when clauses in an insurance policy conflict, the court attempts to harmonize the provisions to give effect to all. Fourth, if a provision in the insurance contract is found to be susceptible to two different, but reasonable, interpretations, it is deemed ambiguous. Finally, when a term or policy is found to be ambiguous, it is always resolved against the insurer and in favor of the insured.

The court of appeals identified that the policy's "Option ID" provision "provides that when the amount actually and necessarily spent to replace a damaged structure exceeds the policy's liability limit, State Farm will pay the Option ID coverage." This coverage under the policy applied to a dwelling, including "structures attached to the dwelling." The court identified that there was no dispute that the attached shop was a dwelling at the time of the fire. The issue the parties focused on was "whether the stand-alone shop and the attached shop were of 'similar construction'"

Engaging in this analysis, the Pooles argued that the attached shop and the stand-alone shop were constructed in the same style and quality, with the same type of materials and for the same purpose. State Farm responded, arguing that the fact that the replacement was a stand-alone shop rather than attached necessarily meant that they were not of similar construction. Rather than engage in this debate, the court identified an underlying issue with the provision relied upon. It found that the provision at issue only addressed whether a structure was covered at the time of the loss. The policy did not expressly prohibit rebuilding an attached structure that constitutes a dwelling at the time of loss as a stand-alone structure.

After identifying this ambiguity regarding whether a covered "attached structure" could be rebuilt as a "stand-alone" structure, the court resolved the dispute by construing the ambiguous term against the drafter. In this case, because State Farm drafted the policy, the court construed it against State Farm and in favor of the Pooles. Accordingly, it reversed the trial court's grant of summary judgment and held that the Pooles were entitled to recover the costs they incurred, up to the policy limits, in constructing the stand-alone shop.

This case serves as an important reminder of the method by which Washington courts interpret insurance policies. In the end, if there is any ambiguity in the coverage provisions, a court may end the dispute by interpreting the language against the insurer. When that happens, the insurer may be subjected to bad faith claims.

View full opinion at: *https://www.courts.wa.gov/opinions/pdf/D2%2050140-6-II%20Published%20Opinion.pdf*

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