

Court Affirms Bad Faith Verdict in Homeowner's Insurance Case

In a new case from Division Three of the Fourth Appellate District, *Chicago Title Insurance Company v. AMZ Insurance Services; Pacific Specialty Insurance Company*, ___ Cal. App. 4th ___ (September 9, 2010), the California Court of Appeal has given policyholders a good holding on the issues of when a policy binder becomes effective, when an agent acts on behalf of an insurer and what actions constitute bad faith.

Thomas and Cheryl Mustains ("Mustains") successfully refinanced their home mortgage with an escrow closing date of October 12, 2005. One of the conditions by the lender was a new homeowner's insurance policy was to be received and the premium paid for in escrow by Chicago Title. The Mustains' loan officer contacted AMZ Insurance Services Inc. ("AMZ") and McGraw Insurance Services ("McGraw") to obtain the homeowner insurance policy. AMZ selected Pacific Specialty Insurance Company ("PSIC") as the insurer. AMZ prepared an Evidence of Property Insurance ("EOI"), a computer generated form naming PSIC as the Insurer and the Mustains as the insureds for homeowner's insurance, which was sent to Chicago Title. Unfortunately, an application from the Mustains was never completed, and the premium was not paid by Chicago Title. On November 11, 2005, the Mustains' home burned down. Chicago Title reimbursed the Mustains for their loss, and in turn obtained an assignment of rights from the Mustains.

Chicago Title sued both PSIC and McGraw, the parent company of PSIC, for breach of insurance contract, bad faith, and declaratory relief. In a special verdict, the jury found:

- 1) The EOI was not legally cancelled before the Mustain's fire loss on 11/11/2005
- 2) AMZ had actual or ostensible authority to prepare and issue the EOI on behalf of PSIC and McGraw
- 3) PSIC and McGraw breached their obligation of good faith and fair dealing by failing to pay insurance proceeds to the Mustain's under the EOI
- 4) PSIC and McGraw breached their obligation of good faith and fair dealing by failing to properly investigate the Mustain's fire loss; and
- 5) PSIC and McGraw's wrongful actions caused Chicago Title to bring the lawsuit against AMZ.

On appeal the Appellate Court affirmed, ruling in favor of Chicago Title. The central issue in this case was whether EOI issued by AMZ was an enforceable binder of homeowner's insurance extending coverage from PSIC for a fire loss incurred by the Mustains. The EOI was an effective binder for which the loss of the house came within coverage. The court explained:

The trial court correctly instructed the jury. The existence and content of the EOI were undisputed. "Whether undisputed facts establish the existence of a binder is a question of law." (*Adams, supra*, 107 Cal.App.4th at p. 451.)

The EOI on its face constituted a binder as a matter of law. It included all of the required elements for a binder under Insurance Code section 382.5, subdivision (a): The EOI identified

the insurer (PSIC), the insureds (the Mustains), the (purported) agent executing the EOI (AMZ), the effective date of coverage, the binder number, and the address of the insured property. The EOI states, "[t]his is evidence that insurance as identified below has been issued, is in force, and conveys all the rights and privileges afforded under the policy." Under "Coverage," the EOI states, "See Supplemental Information Page(s)," which lists the coverages provided with the amounts of insurance and the deductible for each. The EOI recites the total annual premium as \$776, and included with the EOI was an invoice to Chicago Title in that amount.

But the Appellate Court also found that despite the lack of notice of appointment with the Department of Insurance, AMZ's acted as PSIC's agent based on actual and ostensible agent theories. The issuance of the EOI by AMZ was not out the ordinary course of business between AMZ and PSIC, and PSIC had never complained about AMZ issuing the EOI prior to the receipt of the insurance premiums. The court explained its ruling that the lack of a notice of appointment was not controlling:

While the lack of a notice of appointment might subject AMZ to fines or a disciplinary proceeding, AMZ's actions in issuing the EOI as a binder could bind PSIC if the facts otherwise support an agency relationship. "[Insurance Code section 1704, subdivision (a)] may simply impose further requirements on the conduct of an insurance agent, rather than establishing additional criteria for the creation of an agency relationship. In other words, it may be unlawful for an entity to act as an agent of the insurer without complying with section 1704[, subdivision](a), but that entity would still constitute an insurance agent for the present purposes." (*Oakland-Alameda County Coliseum, Inc. v. National Union Fire Ins. Co.* (N.D.Cal. 2007) 480 F.Supp.2d 1182, 1196.) We agree with this reasoning.

The Appellate Court also found that PSIC and McGraw acted in bad faith because they did no investigation into the Mustains' claim, as there was evidence that an employee with PSIC concluded "the EOI issued to the Mustain's escrow was legally inconsequential and not even worth forwarding to the PSIC claims department." The court found that PSIC did not investigate whether its policy of authorizing AMZ to cancel a binder by stamping "void" on the EOI was lawful. The court also stated that "[t]he evidence supported the inference too that PSIC's policies and practices for issuing EOI's were created in bad faith to allow PSIC to try to evade liability precisely in the circumstances presented by this case."



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