



Barger & Wolen Obtains Court of Appeal Decision Affirming Defense Verdict in Insurance Bad Faith Action

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Kent Keller and Larry Golub recently obtained a successful appellate result in a long-running bad faith lawsuit. In *Ramon Aguilera v. 20th Century Insurance Company*, an unpublished decision of the California Court of Appeal, Second Appellate District, the court upheld the trial court's dismissal of the bad faith action following the jury finding that the plaintiff had not incurred any damages, even though the implied covenant of good faith and fair dealing had been breached.

The saga underlying this matter commenced in March 1994, when Ramon Aguilera shot and killed his tenant over a dispute concerning unpaid rent. 20th Century (now known as 21st Century) had issued a homeowners policy to Aguilera, which contained a number of exclusions that, under ordinary circumstances, should have resulted in no coverage afforded to Aguilera for his shooting of the tenant. But, as one of the several trial court judges who handled this matter found back in 2003, ordinary circumstances were not present in this case.

After the insured shooter and the common law wife and children of the decedent joined forces in a bad faith action, 20th Century initially prevailed on summary judgment in 1998, only to have that decision reversed by the Court of Appeal in 2000 and setting the stage for a trial that would assert only equitable claims such as promissory estoppel. Three years later, in a judge trial, the court concluded that 20th Century was precluded from relying on any exclusion in its policy because it had agreed to pay the policy limits in the event

Aguilera pled guilty to involuntary manslaughter. This purported "agreement" was nowhere recorded at the time it was supposedly made and indeed the parties' conduct around the time of the claimed "agreement" was inconsistent with the existence of any "agreement." Nevertheless, the trial court found such an agreement, likening the many claimed discussions among the parties to "the parlor game of telephone." Ultimately, the trial court found 20th Century responsible to indemnify the underlying verdict in favor of the decedent's wife and children, and that decision was affirmed on appeal in September 2007.

In the meantime, the insured's bad faith lawsuit proceeded to a jury trial in late 2005. The trial began with the court advising the jury that a prior court proceeding had already found (and they should accept) that 20th Century's policy provided coverage for Aguilera's shooting of the tenant and that 20th Century could not raise any of its exclusions since it had "engaged in a course of conduct" that had the effect of communicating a promise to Aguilera that 20th Century would provide coverage if he pled guilty to involuntary manslaughter. While, after a lengthy trial, the jury did find that 20th Century had breached the implied covenant of good faith and fair dealing, the jury nevertheless found that such breach did not cause any injury, damage, loss or harm to Aguilera. As a consequence, the jury was discharged and judgment was entered in favor of 20th Century.

The appeal that followed raised all manner of legal issues, such as whether 20th Century was

allowed to re-litigate issues addressed in the first trial, whether certain of the admitted evidence was correctly allowed into evidence, and whether the trial court had, following the jury's response as to there being no damage, correctly dismissed the claims for punitive damages and attorney's fees. 20th Century prevailed on all these issues in the appellate decision issued December 30, 2008, which affirmed in full the judgment in favor of 20th Century. The unpublished decision can be found at <http://www.courtinfo.ca.gov/opinions/nonpub/B190775.DOC> and 2008 WL 5401635.

For further information, please contact Kent Keller or Larry Golub.

Kent R. Keller is a partner in the firm's Los Angeles office. He is well known for his handling of insurance regulatory matters, bad faith and in recent years, class action cases as well as litigation involving a wide variety of contract disputes and unfair business practices, including California Unfair Competition Law Sections 17200-17210 lawsuits.

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