

Missouri Insurance Bad Faith Claim Overrides New York Choice of Law Provision

A Missouri court recently refused to apply a New York choice of law provision to policyholder's Missouri statutory insurance bad faith claim.

In Maritz Holdings, Inc. v. Certain Underwriters at Lloyd's London,¹ the policyholder, Maritz, sought insurance coverage for cyber-security breaches that resulted in the theft of electronically stored gift card information. Lloyd's of London provided Maritz with breach-response insurance policies from 2015 through 2017, and Maritz sought coverage from Lloyd's for fees and costs incurred in responding to the security breaches. Lloyd's denied the claim, and Maritz sued Lloyd's for breach of contract as well as "vexatious refusal to pay," a Missouri-specific statutory bad faith claim. Since the policies explicitly stated that they were subject to New York law, Lloyd's moved to dismiss the Missouri-specific "vexatious refusal to pay" bad faith claim.

Missouri law permits three types of bad faith insurance claims to be brought against an insurer: failure to defend, bad faith failure to settle, and vexatious refusal to pay a claim.² Vexatious refusal to pay a claim occurs when an insurance company refuses to pay a claim without a good reason; for example, when an insurance company fails to investigate the claim before denying coverage. An insured can recover up to twenty percent of the first \$1,500 of the loss and ten percent of the loss in excess of \$1,500 – in addition to reasonable attorney's fees and the amount of recovery owed under the policy – based on the insurer's "vexatious" conduct.

On the other hand, in New York, there is no independent cause of action for an insurer's alleged bad faith unless a policyholder pleads facts that are separate and distinct from the facts supporting the breach of contract claim. In New York, insureds must prove "egregious tortious conduct" by the insurer against the insured *and* against the public at large, in which case punitive damages may be awarded. However, the standard of proof is relatively high.

The court sided with the policyholder and agreed to apply Missouri's vexatious refusal statute, despite the policy's New York choice of law provision. The court acknowledged that in Missouri, contracting parties may choose which state's law will govern the interpretation of their contractual rights and

¹Case number 4:18-CV-00825, in the U.S. District Court for the Eastern District of Missouri.

²Mo. Rev. Stat. § 375.420 provides: In any action against any insurance company to recover the amount of any loss under a policy of automobile, fire, cyclone, lightning, life, health, accident, employers' liability, burglary, theft, embezzlement, fidelity, indemnity, marine or other insurance except automobile liability insurance, if it appears from the evidence that such company has refused to pay such loss without reasonable cause or excuse, the court or jury may, in addition to the amount thereof and interest, allow the plaintiff damages not to exceed twenty percent of the first fifteen hundred dollars of the loss, and ten percent of the amount of the loss in excess of fifteen hundred dollars and a reasonable attorney's fee; and the court shall enter judgment for the aggregate sum found in the verdict.

duties. However, if the application of the chosen law is contrary to Missouri's public policy, Missouri courts may disregard the parties' choice-of-law provision. The court found that Missouri's public policy has the protection of its own citizens as a "paramount concern." The policyholder, Maritz, had been a Missouri-based corporation at all times relevant to the dispute and maintained its principal place of business in Missouri. As a result, the Court found a concrete local interest for a Missouri corporation to be protected by the application of Missouri's vexatious refusal statute, overriding the New York choice of law contract provision.

This case illustrates how an insurance dispute can involve the application of one state's law to a standard breach of contract claim and another state's law to a separate bad faith insurance claim.

SDV attorneys are fully versed in how bad faith insurance law interplays with breach of contract claims. For more information, contact Bethany Barrese at BBarrese@sdvlaw.com and Andres Avila at AAvila@sdvlaw.com or call 203.287.2100.