

Insurer Can't Get New Trial After \$2.6M Loss In Bad Faith Case

By **Josh Liberatore**

Law360 (July 29, 2022, 2:41 PM EDT) -- Rockhill Insurance Co. isn't entitled to a new trial after it was found to have acted in bad faith and was ordered to pay a fishery \$2.6 million, a Colorado federal judge said, rejecting the insurer's contention that it was prejudiced by the exclusion of certain evidence.

In an **order filed Thursday**, U.S. District Judge Raymond P. Moore said that the court didn't err by excluding from trial evidence of certain "litigation conduct" from Rockhill's yearslong legal battle with CFI-Global Fisheries Management. Nor was the jury given improper instructions about the insurer's payment and settlement obligations toward CFI under a professional liability policy, the judge said.



A Colorado federal judge ruled that an insurer is not entitled to a new trial after it was found to have acted in bad faith and was ordered to pay a fishery \$2.6 million. (AP Photo/Grace Ekpu)

Rockhill filed a motion for a new trial, contending that the jury should've been made privy to Judge Moore's April 2018 order finding that Rockhill didn't have to **cover CFI** for a nearly \$900,000 arbitration award the wildlife management company owed to Heirloom I LLC over a business project gone wrong.

Judge Moore noted that the Tenth Circuit later reversed that ruling, and Rockhill eventually settled with Heirloom, paying just over \$1 million to cover the award on behalf of CFI.

"The jury likely would have been confused had it learned that the court previously granted summary

judgment in plaintiff's favor on the issue of coverage," Judge Moore said.

The judge also rejected Rockhill's contention that the jury wasn't adequately instructed on an insurer's reasonable conduct. Judge Moore said there was no "incorrect statement of the law" in the instructions he gave, while Rockhill sought to include instructions that had the potential to mislead the jury.

However, the district judge did reject CFI's bid to amend its \$1.6 million statutory award up to \$2.3 million, finding that the court's initial calculation of the judgment was in keeping with Colorado law.

The case stretches back to November 2016, when Rockhill sued CFI and Heirloom seeking to avoid covering a then-pending arbitration dispute between the two sides over a project to transform a stretch of the Weminuche Creek in Colorado into a fishery. In 2017, Heirloom was awarded nearly \$900,000 from CFI in the dispute.

In April 2018, Judge Moore cleared Rockhill of its coverage obligations, finding that a faulty-workmanship exclusion in CFI's professional liability policy applies. The judge also tossed CFI's common law and statutory bad faith claims against its insurer.

The Tenth Circuit issued a partial reversal in July 2019, finding that the exclusion doesn't apply to bar coverage and reviving CFI's statutory bad faith claim.

Rockhill and Heirloom settled for just over \$1 million in 2020, while CFI pursued its bad faith claim against its insurer before the Colorado federal court.

Following a trial held in March 2021, a jury found in favor of CFI, finding that Rockhill acted unreasonably in waiting until 2020 to settle Heirloom's claims against the company. Rockhill was ordered to pay around \$1.6 million to CFI in statutory damages as well as around \$1 million in attorney fees.

In its motion for a new trial, Rockhill argued that Judge Moore's April 2018 order should've been given to the jury because it was "highly probative evidence" that the insurer could've used to show it didn't act in bad faith by initially refusing to fund the arbitration award.

Judge Moore said revisiting that order would've overwhelmed the jury with "legal arguments and issues far afield from the factual issues at the heart of this case." That's because the trial was on whether Rockhill handled CFI's claim in a reasonable manner, not on whether there was coverage under the policy itself, the judge said.

Rockhill also argued the jury instructions on its duty to settle "virtually directed the jury to find in CFI's favor" by presenting the jury with an incomplete picture of an insurer's legal obligations.

But Judge Moore said there was no "incorrect statement of the law" in the jury instructions he gave. The instructions Rockhill wanted to include were "were misleading," the judge explained, because they presented certain instances where an insurer's refusal to pay a claim could be seen as reasonable, but only in the absence of other contributing factors.

However, Judge Moore refused CFI's request to add around \$700,000 to its judgment award. The judge said he properly calculated the \$1.6 million damages award under Colorado law by taking the \$1 million limit of CFI's professional liability coverage, subtracting around \$200,000 for Rockhill's claim expenses and then doubling that number.

Representatives for Rockhill and CFI didn't immediately respond to requests for comment Friday.

Rockhill is represented by Jon F. Sands and Marilyn S. Chappell of Sweetbaum Sands Ramming PC and by Adam H. Fleischer, David Michael Alt and Mark Andrew Dep of BatesCarey LLP.

CFI is represented by Alan C. Bradshaw and Christopher M. Glauser of Manning Curtis Bradshaw & Bednar PLLC.

The case is Rockhill Insurance Co. v. CFI-Global Fisheries Management et al., case number 1:16-cv-02760, in the U.S. District Court for the District of Colorado.

--Additional reporting by Ryan Boysen. Editing by Neil Cohen.

