

“Perfection” Not Required: Third Circuit Affirms Summary Judgment to Insurer

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The Third Circuit Court of Appeals recently affirmed a District Court’s grant of summary judgment after concluding that the claim handling, while not “a model of perfection,” did not constitute bad faith. *Washington Street, LLC v. Nationwide Property & Cas. Ins. Co.*, 2023 WL 5950553 (3d Cir. Sep. 13, 2023).

In *Washington Street*, a fire caused by a tenant’s alleged negligence destroyed an entire apartment building owned by the plaintiff and insured by the insurer. The plaintiff submitted a claim for recovery. Six weeks later the insurer made an initial claim estimate and payment of \$376,342.95. The insurer noted that this amount was subject to change based upon additional repairs or damages found. The plaintiff provided further estimates for repair and the insurer paid an additional \$208,555.91, bringing to the total payments to \$584,907.68.

Plaintiff was dissatisfied with the total payment and requested an appraisal. Both sides hired appraisers and they appointed an umpire to resolve any disagreements. After the umpire entered an award for the plaintiff in excess of the policy limits, the insurer paid the policy limits.

The plaintiff sued the insurer for common law and statutory bad faith, alleging that insurer repeatedly and purposefully delayed its insurance payouts, misrepresented the policy’s appraisal prerequisites, and illegally initiated a subrogation action before plaintiff was made whole. The insurer moved for summary judgment and the district court granted its motion.

The district court held, and the Third Circuit affirmed, that the six-week timeframe before the first payment was made did not constitute unreasonable delay, as the insurer promptly investigated the claim and sent a specialist to visit the burned building soon after it was deemed safe. Further, the insurer had been in communication with the plaintiff in the time between the fire and the first payment, rebutting the plaintiff’s claim that the insurer failed to communicate.

The Third Circuit next discussed that the insurer’s claim specialist believed that his estimate covered all apparent damage and that only demolition would reveal damage to hidden components of the building. The Third Circuit concluded that while that assertion may have been incorrect, bad judgment is not bad faith. Once a supplemental damage estimate were received by insurer, the claims specialist determined that another building specialist was required. Eventually, the insurer agreed to pay the full policy amount. The third Circuit noted that while the insurer’s pace of review could have been more diligent, but that did not mean that it was unreasonable, much less that it showed a disregard for the plaintiff’s contractual rights.

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