



Sauerbier Ranch v. Catlin Specialty Ins. (directed verdict)

FEDERAL COURT

INSURANCE BAD FAITH: JML for insurer on bad faith claims following settlement of Tenants-in-Common investments suit by ranch . . . Haddon.

Plaintiffs' position: Sauerbier Ranch et al. sued Welton Streets Investments, a Colorado brokerage, in Lewis & Clark Co. Court alleging professional negligence including violations of FINRA and the Montana Securities Act, breach of fiduciary duty, negligent misrepresentation, negligent supervision, and tortious & contractual breach of the implied covenant in relation to Tenants-in-Common investments. Montanans Ray Peterson and Rick Ahmann were agents of Welton. Catlin insured Welton under a professional liability policy for claims made and reported 12/1/09-8/25/10. The Declaration Page lists \$1 million each claim and \$2 million aggregate liability. Catlin issued a reservation of rights letter in 5/12, taking the position that Plaintiffs' claims, as well as claims asserted by Buckingham/Bailey, Trollman, Sussoef, and Garrison, represented a single "claim" subject to 1-claim limit of liability in the amount of \$1 million because all claims were "Interrelated Wrongful Acts." The claim in the Underlying Action asserted actual damages of some \$1.2 million. Plaintiffs' claims against Welton settled in 6/13. Plaintiffs now assert 3rd-party bad faith claims against Welton alleging that it neglected to act in good faith and effectuate prompt, fair, and equitable settlement of their claims in which liability had become reasonably clear, including that Welton held themselves as experts and with knowledge that Plaintiffs were unsophisticated investors who advised Welton and its agents that they were highly risk adverse, recommended that Sauerbier place essentially all of its liquid net worth garnered from sale of the ranch into TICs which Welton and its agents knew were speculative, high-risk, illiquid investments, and that Karl Sauerbier was in his 80s in poor health and income was needed by his family to care for him and address mounting debt at the ranch. Welton nevertheless presented speculative, high-risk investments that not only placed all of Sauerbier's liquid net worth at risk of loss but also exposed it to risk of loss beyond the initial investment in the form of cash calls which did occur. With this knowledge and the knowledge that Karl Sauerbier had no prior investment experience, Welton's agents recommended that the ranch sell part of its property and that all proceeds after paying off the significant debt be re-invested through a 1031 into 3 TICs. Welton also breached its duties under the UTPA by misrepresenting that 5 claims were "Interrelated Wrongful Acts" subject to 1 Claim Limit of Liability in the amount of \$1 million as opposed to the \$2 million aggregate, and used this as leverage for its inequitable settlements and general bad faith conduct. Plaintiffs' claims were not related to 4 other claims, some of which were filed in different states at different times on advice from different Welton brokers regarding different objectives and circumstances. The transactions giving rise to Plaintiffs' individual claims were many and varied, occurring over a period of years, as opposed to circumstances of multiple injuries arising out of the same transaction. Sauerbier will request \$1 million actual damages and \$10 million exemplary.

Defendant's position: Catlin has established the reasonable basis defense, which is a complete defense to all of Plaintiffs' claims. The policy specifically provides that "all claims based upon or arising out of the same Wrongful Act or Interrelated Wrongful Acts shall be considered a single Claim." It defines "Interrelated Wrongful Acts" as wrongful acts which are "connected by reason of any common fact, circumstance, situation, transaction, casualty,

decision or policy or one or more series of acts, circumstances, situations, transactions, casualties, events, decisions or policies." All 5 Argus Realty Investors' claims for which Catlin had notice were reported as one "matter" in a single notice, all 5 involved 1 sponsor (Argus), all demands involved 1 broker/dealer (Welton), all demands arose from the collapse of Argus. The demands involved the same due diligence investigation of the TICs sponsored by Argus. Catlin's insured and insured's counsel agreed that one policy limit of \$1 million applied. Catlin correctly applied New York law and the policy provisions to reasonably determine that the 5 Argus claims were interrelated wrongful acts. Catlin reasonably relied on the legal determination by counsel regarding coverage available. Although liability was not reasonably clear, Catlin paid its \$1 million limits, divided among the claimants. Because it had a reasonable basis to apply the \$1 million, it "may not be held liable" under MCA 33-18-242(5). Plaintiffs also fail to establish that Catlin violated the UTPA. It consistently and accurately represented its coverage position that the claims were interrelated wrongful acts subject to a single "each claim" limit of \$1 million. Plaintiffs have failed to establish an affirmative misrepresentation, and "the UTPA does not confer upon insurers a duty to disclose information in response to third-party claimants' requests for an explanation of coverage, policy limits, and amounts already expended on defense." *Bateman* (9th Cir. 2011). Plaintiffs did not even request such information, so Catlin clearly had no duty to provide it. Catlin did not "neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of the claims in which liability had become reasonably clear." It did in fact settle these claims, and did so promptly. In addition, liability was never reasonably clear. Plaintiffs settled on the premise that the claim was disputed and with the acknowledgment that Welton did not admit liability. Defense counsel informed Catlin that the case against Catlin lacked merit. Because Catlin reasonably applied the \$1 million "each claim" limit and paid those limits among the claimants, Plaintiffs suffered no damages caused by Catlin's handling of the claim. Plaintiffs cannot seek damages for investment losses because those losses were not caused by the claims handling. Because Catlin paid its limit of \$1 million among the Argus claimants, and Plaintiffs voluntarily agreed to that settlement, they were not damaged. Moreover, they would be entitled only to a pro rata share of the limits even if liability was reasonably clear. Catlin relied on the advice of counsel in several respects including investigating the claim, determining that liability was not reasonably clear, and determining that the \$1 million limit applied pursuant to the policy's definition of "interrelated wrongful acts." "The legal advice which informed [Catlin's] decision to contest the claim is relevant to whether that decision was grounded in a 'reasonable basis in law.'" *Redies* (Mont. 2007). Catlin relied on its attorney (Rogers) in determining that the single-claim \$1 million limit applied. In addition, under Montana law, as interpreted by the 9th Circuit, an insurer may rely on lead counsel's advice as to whether liability was reasonably clear. *Bateman*. Catlin relied on Wolf's determination that the case against Welton was defensible and that liability was questionable. The "advice of counsel" defense forms a basis for Catlin's reasonable basis defense pursuant to MCA 33-18-242(5); *Penn* (Ostby 2013). Plaintiffs cannot establish punitive elements. Actual fraud is not an issue, and they have not established malice by any evidence, much less clear & convincing. MCA 27-1-221(1). In addition, the "reasonable basis" defense provides a complete defense to the claim for punitives. *EOTT* (25 MFR 161, Cebull, 1999).

The Court dismissed the individual Plaintiffs based on lack of standing. It dismissed Plaintiffs' claims for emotional distress damages against Sauerbier Ranches Inc. Catlin moved for judgment as a matter of law on the 3rd day of trial after Sauerbier rested.

JML by Judge Haddon. A decision was made by Catlin that the separate claimants' presentations constituted 1 claim. I have no evidence that that was a wrong decision. It comports with the language of the policy. I conclude, as a matter of legal ruling, that the company was, as a matter of law, correct in treating these separate claimants under the terms of the policy as 1 claim. I likewise conclude that the limits available for any one claim was \$1 million. I do not find -- and I rule to the contrary -- any assertion that there was ever \$2 million coverage available through this insurer to cover the claims asserted by Sauerbier. There was \$1 million in coverage maximum, subject by terms of the policy to diminution by expenses incurred in defending the claims, and that it was, as has

been characterized in the evidence part of the trial, a wasting policy. If these claims were appropriately interrelated claims, as I have found them to be, then the reality is that the company had a million dollars, less costs incurred in defending the claims, available to settle the claims under terms of its policy. I find no misrepresentation of coverage. I simply don't find it. It's not there. There is never any proof that the company ever misrepresented the coverage available. The argument of some reliance on a \$2 million policy limit I find to simply be unsupported either by the facts of the case or by the language of the policy. So we must then accept that the company had issued a \$1 million policy, that the several claimants' amounts submitted were appropriately treated as related claims, and that we have a million dollars, less costs incurred, available to be paid out to settle the claims in terms of the responsibilities of the carrier which might rise to a claim of bad faith. And I simply don't find any misrepresentation.

So the next question is: Is there evidence to support a case going to the jury that the carrier failed to effectuate a prompt, fair, and equitable settlement of claims in which liability has become reasonably clear? While the settlement agreement is not a dispositive analysis of issues of liability, there are many provisions in it which bear directly on the issue of the company's conduct. If there is a general message to be gained from the language chosen by the parties and incorporated into the agreement, it is that there was a dispute as both to liability and as to damages; that the parties, by their compromise settlement, were settling the claim; and that there were no representations apart from what is recited in the document; and that each side was acting and relying solely on independent advice of counsel. Of course, pgf. 5.3 carved out an exception for potential bad faith claims and I do not reach a conclusion that any potential claim as now asserted was actually given up by terms of the release. But certainly the content of the release bears directly and emphatically on the proposition that there was no liability admission, there was no damage admission, and the claims settled were disputed claims.

I cannot find that liability was reasonably clear. Certainly there is evidence that the insured now went broke. There isn't any question about that. There isn't any question but that investors lost money. Those issues never have been disputed. However, the question is not about whether the investment company went broke. The question is not about whether the investors lost money. The question is whether the insurance company failed to act appropriately to settle the claim once liability had become reasonably clear. And I have concluded that there is simply not enough evidence to justify submission of that question to a jury. That the company settled in 82 days from knowing that there was a claim, of itself, has not been asserted as being an unreasonable period of time, and I certainly do not find it to be an unreasonable period. The question of amount of money paid for the settlement is answered in 2 ways: I have concluded that as a matter of law there was only \$1 million available and that the company cannot be faulted for having put up the million dollars less expenses to settle these claims. The 2nd half of the answer to that question is that the settlement was accepted, clearly unequivocally accepted by the claimants on the basis of disputes as to liability and damages, and accepted with the clear & independent advice of counsel. On those grounds I cannot find that there is any basis for allowing to go forward a claim that the company neglected to attempt to resolve this case in what is characterized as good faith. Bottom line, ladies & gentlemen, I conclude that the Plaintiff has simply not established a prima facie case on liability.

Separate and apart from that is the assertion by Catlin that if it acted appropriately in resolving the case, that constitutes a complete defense to the claim asserted. And that is also a part of what the Court deems to be established law. That is that it is a complete defense if the company had a reasonable basis in law or in fact for contesting the amount of the claim or the claim itself, whichever is in issue. Both were in issue. Both were resolved by a settlement of the case, and I can conclude nothing other than that the company had a reasonable basis. No matter how the amount of the settlement paid is looked at in retrospect, at the time these events occurred there was a limited amount of coverage available. The parties were represented by counsel. They entered into a good faith negotiation. They settled the case. They signed the papers. The money was paid. And, in the view of the Court, that resolved the controversy insofar as the obligation of the carrier is concerned. I find

no basis under the Montana unfair insurance practices act to suggest that this company did anything wrong. It did the best it could with what it had to work with. Obviously there was a bad result in terms of money paid. And nothing, no matter how badly the Sauerbier Ranch Corporation may have been harmed by this set of events, the fault in this lawsuit does not lie at the feet of the insurance company. Plaintiff has failed to make a prima facie case warranting continuation of evidence under Rule 50, and the claims of the plaintiff are dismissed.

It is not necessary to reach any decisions about the punitive damage claim. But to touch on that matter, as a matter of specific comment, we don't have any evidence that, in the view of this Court, would suggest that the insurance company acted in any way that would implicate or implement the actual malice requirements of Montana law. Therefore the Defendant's Rule 50 motion is to be granted as to all claims of liability and the claims of punitive damages are likewise to be dismissed. The Clerk will enter judgment in favor of the Defendant.

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Linda Deola & Scott Peterson (Morrison, Sherwood, Wilson & Deola), Helena, for Sauerbier; Randall Nelson (Nelson & Dahle), Billings, and Martha Sheehy (Sheehy Law Firm), Billings, for Catlin.