

AN INSURANCE COMPANY'S FAILURE TO PROPERLY INVESTIGATE A CLAIM CAN LEAD TO BAD FAITH LIABILITY.

When a home or business is damaged by a covered peril, the insurance carrier for property damage has an obligation to conduct an investigation of your claim. When the insurer fails to conduct an adequate investigation before denying the claim, this can justify consequential damage (i.e. non-contract damages). The case of *Bello v. Merrimack Mutual Fire Insurance Company* is a case in which an inadequate investigation by the insurance company turned an \$85,000 claim into an \$850,000 bad faith judgment. The case is instructive in terms of the consequences of a sub-standard investigation by an insurance company.

The insured submitted a claim to Merrimack for wind damage to the insured's hundred year old retaining wall. While Merrimack sent someone to investigate the damage, the investigator had no background in engineering. The wall, which had collapsed in two separate sections, was examined by the investigator. Nonetheless, the investigator concluded that the damage was the result of vegetation growth rather than wind. The investigator offered the opinion that the wall failed because of lack of maintenance by the policyholder. The alleged cause of the collapse was the intrusion of vegetation under and around the retaining wall.

The insured retained an expert, who was

an engineer, to conduct an inspection of the damage. The expert retained by the policyholder concluded that the vegetation growth was "not significant" and that there was no evidence of deficient maintenance. The policyholder also had a contractor prepare an estimate of the cost to repair the retaining wall. The contractor estimated the cost of repair to be \$85,000. He also indicated that the extent of the damage was increasing daily as the breached areas of the wall became destabilized. Although this information was communicated to Merrimack, it did not respond. The wall continued to undergo further deterioration while the claim was in limbo.

The policyholders then filed an internal appeal with the insurance company in an attempt to resolve the claim. Merrimack reversed its denial of the claim. However, the insurer offered a settlement of only \$62,549.46, which represented the insurance adjuster's estimated cost of repair of \$108,813 less 43 percent depreciation because of the age of the wall. The insured rejected the settlement and filed a lawsuit. Merrimack elected to commence the appraisal process designated in the policy. At the conclusion of

the appraisal process, the insurer tendered \$100,750, the policy submit for the retaining wall.

However, the insured filed an amended complaint that included an allegation of bad faith against the insurance carrier. The bad faith allegation indicated that the insurer's handling of the claim had permitted the wall to further deteriorate and cause additional damage to the insured's yard. The insured provided expert testimony indicating that the 43 percent depreciation calculation was not supported by the claim or published standards. The jury returned a verdict of \$624,023 to cover the cost of replacing the wall and landscaping with no setoff for depreciation or sums previously paid to the insured. The trial judge also awarded \$195,583 in attorneys' fees and \$31,346 in litigation costs.



The insurance company appealed, but the appellate court upheld the trial judge based on its finding that the insurance company acted unreasonably in three respects:

(1) An adjuster indicated in the file that the

expert sent out was not an engineer, and the adjuster "did not like doing business that way"; and

(2) Another adjuster on the file indicated that the wall needed to be re-inspected by an engineer, but this was never done; and

(3) The insurance company knew that some of the damage was caused by wind, but initially denied the claim outright.

This case illustrates the benefit to an insured of obtaining an inspection by engineers, contractors or other appropriate experts. By providing the expert report to the carrier, the insured essentially put the onus on Merrimack at trial to prove the damage was caused by vegetation. Further, an insurance company that fails to retain the appropriate experts to conduct an adequate investigation can be subject to bad faith liability.

LABOR DAY

Labor Day is a day dedicated to honoring and recognizing the achievements of the American worker. It is a national holiday and celebration which recognizes the contributions that the American worker has made to the success of our great nation. Labor Day is celebrated on the first Monday in September as a three day weekend. The Central Labor Union observed the first Labor Day holiday in 1882 in New York City. Labor Day marks the end of the summer season, traditionally the beginning of school, and the start of football season. According to the rules of fashion, Labor Day Weekend is the last official time where wearing white is appropriate, although the conventional wisdom is that this "rule" does not apply in our Miami tropical wonderland.

Don't quit on your insurance claim just because your insurance company quit on you!



J.P. has built his entire career on protecting the rights of insurance policyholders, personal injury and wrongful death victims and fighting for the rights of Florida consumers and small businesses. Prior to attending law school, J.P. worked as a claims adjuster for a busy independent adjusting firm in Miami where he handled hundreds of claims. Before launching his own law practice in 1994, J.P. worked for a prominent insurance defense firm in Miami. He now uses the insight that he gained working for the insurance industry for the benefit of his clients. J.P. has recovered millions of dollars for victims of denied or underpaid insurance claims, victims of catastrophic personal injuries and wrongful death and on behalf of those that have been taken advantage of by Big Business and Big Insurance. In Miami-Dade County call J.P. at (305) 461-1095 or toll free at (866) 71-CLAIM or fill out the short online contact form at www.YourAttorneys.com.

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