

Bad Faith Count Survives Motion to Dismiss, Even Though District Court Initially Agreed That Policy Afforded No Coverage

March 2014

The United States District Court for the Central District of Illinois has held that a bad faith claim could not be dismissed as a matter of law at the motion to dismiss stage where a district court initially agreed that a policy afforded no coverage but was later reversed by an appellate court. *Strategic Capital Bancorp Inc. v. St. Paul Mercury Ins. Co.*, 2014 WL 562970 (C.D. Ill. Feb. 13, 2014).

A bank requested coverage from its D&O insurer for a suit filed against the bank and two of its directors and officers alleging claims for fraud, civil conspiracy, and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. Three of the five plaintiffs in the suit were former directors of the insured bank. In the ensuing coverage litigation, the court agreed with the insurer that the policy's insured v. insured exclusion barred coverage. The Seventh Circuit reversed in part, holding that the insured v. insured exclusion barred coverage only in part, and that the insurer had a duty to defend and indemnify the bank against the portion of the suit brought by the non-insured plaintiffs.

On remand, the district court considered the remaining arguments of the insurer's motion to dismiss the insured bank's complaint, which contained claims for breach of contract and for bad faith refusal to provide coverage. The insurer argued that the bad faith claim could be dismissed at the motion to dismiss stage because the district court had initially concluded that the policy afforded no coverage, and thus the carriers' denial was *per se* reasonable. Rejecting this argument, the district court held that a resolution of the bad faith claim was premature because the court did not have "the benefit of all the evidence in order to consider the totality of the circumstances, as required by the law regarding" Illinois's bad faith statute. Accordingly, the court denied the insurer's motion to dismiss.