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ALERT

No Summary Judgment for Insurer Regarding Claims for Punitive Damages and Emotional Distress Arising After Insureds' Initial Claim

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A West Virginia federal court, applying West Virginia law, has held that triable issues of fact existed with respect to insureds' claims for punitive damages and emotional distress after an insurer admitted that it had intentionally ignored the insureds' claim for coverage and failed to take necessary steps in handling that claim. *Bordas v. ALPS Corp.*, 2014 WL 1962264 (N.D. W. Va. May 15, 2014).

An insurer issued a professional liability policy to insureds who were named in an arbitration proceeding in May 2011. The insureds notified the insurer of the claim in May, August, and December 2011. The responsible claims professional at the insurer admitted that he ignored the insureds' coverage claim and did not take certain necessary steps in handling the claim because of the complexity of the matter. In February 2012, the insurer advised the insureds for the first time that it would retain defense counsel on behalf of the insureds and agreed to contact an attorney requested by the insureds. That attorney could not be retained, and, in August 2012, the insurer agreed to reimburse the insureds for fees incurred by the insureds' existing counsel. One of the insureds was ultimately found liable for $1,000 in damages in the underlying arbitration.

The insureds then initiated this coverage action and alleged breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional distress, and private causes of action for unfair trade practices and sought, among other relief, punitive damages. The insurer moved for partial summary judgment on two separate grounds. First, the insurer asserted that the insureds were not entitled to punitive damages because they could not prove that

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the insurer intentionally injured the insureds and thus could not prove that the insurer acted with actual malice in handling the insureds' claim. Second, the insurer asserted that the insureds had been represented at all times in the underlying arbitration and therefore could not show emotional distress as a result of the claims-handling.

The court rejected the insureds' argument regarding intentional injury, agreeing that, under West Virginia law, the "actual malice" standard for an award of punitive damages required a party to introduce evidence of intentional injury, but concluding that that the insureds alleged facts sufficient to create a triable issue of fact. Specifically, the court noted that the insurer had admitted to ignoring the insurance claim and to "fail[ing] to meet reasonable good faith standards for claim handling . . . ."

The court also denied the insurer's motion for summary on the emotional distress claim. The insurer had argued that the insureds were in the same position as they would have been if the insurer had promptly provided a defense for them because they were represented by counsel throughout the underlying arbitration. The court concluded, though, that triable issues of fact existed because the insureds also alleged that they suffered emotional distress as a result of the insurer's delay in addressing coverage issues and "the feeling of abandonment from [the insurer]."

The opinion is available here.