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RESULT DATE: Oct. 25, 2007

Joe Vargas v. Fire Insurance Exchange, Blodgett's Chimney Sweep, and Does 1 through 100, Inclusive (BC361522)

Hon. Rita J. Miller
L.A. Superior Central

INSURANCE

Bad Faith
Fire Insurance

SETTLEMENT: \$1,500,000

ATTORNEYS:

Plaintiff - Gary K. Kwasniewski, Jeanette L. Viau (Viau & Kwasniewski, La Canada).
Defendant - Johnna J. Hansen, Timothy D. Lake, Christopher S. Maile (Tharpe & Howell, Sherman Oaks).

TECHNICAL EXPERTS:

Plaintiff - Thomas J. Corridan, insurance claims handling, insurance bad faith, Auburn; John Parkhurst, construction, real property (residential) restoration scopes and repairs, Lancaster.

Defendant - Bernard Feldman, insurance bad faith, insurance claims handling, Del Mar; Alan Forbess, environmental, industrial hygiene, Ojai; John Martinet, general contractor, construction litigation, Carlsbad.

FACTS: The plaintiff's/Insured's home caught on fire in the early hours of Nov. 10, 2005. The home sustained extensive fire damage to the second floor interior, the structure, and the fire burned through the roof. The lower floor sustained extensive water damage from firefighters' efforts to extinguish the fire. There was also smoke damage throughout the home.

The Insured notified his Insurance company of his loss the morning of the fire. The Insurance company's Initial adjuster sent out an "emergency preferred vendor" to board up and tarp the roof. It was apparent to the emergency preferred vendor that immediate dry out of the house was necessary. It was also apparent from the claim file that the Insurance company's first adjuster knew that there was water in the home from the fire extinguishing efforts. However, the emergency preferred vendor was not directed to dry out the house.

After the fire was extinguished at the insured family home, one of the firefighters told the plaintiff that he should hire a public adjuster to help him with his claim. The insured hired a public adjuster, and hired a contractor of his choice to make the home restoration repairs.

The insurance company large loss field adjuster initially determined that the Replacement Cost Value to restore the

home was \$64,772.03; Actual Cash Value (after deductions) was \$51,834.44.

The insured's contractor of choice determined that in fact, it would cost about \$172,000 (Replacement Cost Value) to do the job properly, and to fully restore the home to its pre-loss condition. The insured's contractor of choice was an experienced general contractor, having completed over 600 fire restorations before this loss. The difference between the insured's contractor's estimate and the amount that the insurance company paid was over 2.5 times, or, more than a 150 percent difference.

Using the estimate of the insured's contractor, the insured's public adjuster pointed out to the insurance company that the insurance company's scope left out over 200 repair items, and that it was impossible to repair the home for the amount of the insurance company's estimate.

The parties could not agree regarding restoration repairs and amount, and the lawsuit ensued.

Plaintiff alleged breach of insurance contract and breach of the implied covenant of good faith and fair dealing.

PLAINTIFF'S CONTENTIONS: The plaintiff contended that the Fire Insurance Exchange home restoration scope and estimate omitted critical home repair items and was unreasonably low. The Fire Insurance Exchange policy obligated the insurance company to extract the water after the fire, so that home repairs could properly be effectuated. The extraction of the water would have prevented the formation of mold. The mold was a consequential damage the insured suffered as a result of Fire Insurance Exchange's failure to properly dry out the home.

The plaintiff also contended that the insurance company unreasonably refused to meet with the insured and his contractor of choice to resolve the significant home repair scope and valuation differences. Fire Insurance Exchange's scope left out over 200 repair items, and the insured contended that it was impossible to repair the home for the amount of the insurance company's estimate. Fire Insurance Exchange claimed that it had an independent contractor, Belfor, review the loss, and that Belfor's scope and repair estimate approximated Fire's. However, Belfor was not independent, and Fire Insurance Exchange had merely e-mailed its own scope and repair estimate to Belfor, which Belfor simply "rubber stamped." Fire Insurance Exchange's characterization of Belfor as independent was misleading and improper.

The plaintiff further contended that the insurance company unreasonably delayed in its handling and adjustment of the insured's claim. Fire Insurance Exchange simply refused to change its position regarding what the public adjuster and the insured perceived as the insurance company's lowball restoration scope and estimate. After the insured had to fight with the insurance company for over nine months to get an agreed-to scope so the insured's contractor could begin repairs, the insurance company stopped paying for the insured's Alternative Living Expenses (ALE). The insured's contractor of choice refused to start the job without an agreed-to scope with the insurance company. The insured's public adjuster advised the insured that he should retain an attorney and pursue litigation.

DEFENDANT'S CONTENTIONS: Defendant contended that Fire Insurance Exchange's home restoration scope and estimate were valid, and did not omit home repair items. The Fire Insurance Exchange policy did not obligate the insurance company to extract the water after the fire. The insurance company did not refuse to meet with the insured and his contractor of choice to resolve the significant home repair scope and valuation differences. Fire Insurance Exchange had an independent contractor, Belfor, review the loss, and Belfor's scope and repair estimate approximated Fire's own. The insurance company did not delay in its handling and adjustment of the insured's claim. Fire Insurance Exchange promptly paid the reasonable amount required to restore the insured's home.

SETTLEMENT DISCUSSIONS: In October 2007, Fire Insurance Exchange accepted the plaintiff's demand of \$1.5 million.

RESULT: The case settled for \$1.5 million after the final status conference, and before the first day of trial.

Blodgett Chimney Sweep was dismissed from the case due to no liability.

OTHER INFORMATION: FILING DATE: Nov. 8, 2006.