

New York Court of Appeals Policyholders Can Obtain Consequential Damages for Breach of Contract

By Mark Garbowski

In February 2008, the New York Court of Appeals recognized a simple fact — that policyholders need their insurance payments on a timely basis — and used it as the basis for an important ruling that helps policyholders.

Policyholders in New York are now entitled to obtain consequential damages from their insurance companies. Previously, policyholders had been limited solely to receiving their basic contract damages under insurance policies. If an insurance company refused to pay a claim, and the policyholder prevailed in a lawsuit, then the insurance company would be ordered to pay what it owed (perhaps plus interest), and nothing more, even if the failure to pay caused additional damage to the policyholder. That is no longer the case, because the Court of Appeals acknowledged that an insurance company's failure to pay can cause additional harm that must also be remedied.

As the Court stated in its opinion in *Bi-Economy Market, Inc. v. Harleysville Insurance Company of New York, et al.*:

The purpose served by business interruption coverage cannot be clearer — to ensure that [the policyholder] had the financial support necessary to sustain its business operation in the event disaster occurred ... Certainly, many business policyholders ... lack the resources to continue business operations without insurance proceeds. Accordingly, limiting an insured's damages to the amount of the policy, i.e. money which should have been paid by the insurer in the first place, plus interest, does not place the insured in the position it would have been in had the contract been performed.

As a result of this decision, policyholders in New York State are much more likely to be made whole when their insurance company wrongfully denies coverage, or refuses to pay the entire amount it owes.

Bi-Economy Market

This case arose when Bi-Economy Market, a meat market in Rochester, New York, suffered a major fire in October 2002. Its "deluxe business owner's policy" with Harleysville Insurance Company provided business interruption coverage along with replacement cost coverage for the building and "contents" loss coverage.

Bi-Economy sued its insurance company, Harleysville, arguing that Harleysville's failure to pay the full amount due under an insurance

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policy caused Bi-Economy to go out of business. After Harleysville prevailed on a motion for summary judgment and an intermediate appeal, the New York Court of Appeals ruled that policyholders can receive consequential damages from their insurance company when their businesses collapse as a result of the insurance company's failure to fulfill its contractual obligations.

The decisions below held that "the insurance policy expressly exclude[d] coverage for consequential losses," but the Court of Appeals reversed, holding that "it is well settled that in breach of contract actions 'the non-breaching party may recover general damages which are the natural and probable consequence of the breach'" and that "when an insured ... suffers additional damages as a result of an insurer's excessive delay or improper denial, the insurance company should stand liable for these damages."

Business Interruption Coverage & Consequential Damages

With respect to the business interruption coverage, the policy provided that Harleysville would pay for the loss of Business Income during the "period of restoration," which was defined as ending when "the property ... should be repaired, rebuilt or replaced with reasonable speed and similar quality." For this business interruption coverage, the maximum time period covered was set in the policy at 12 months, even if the actual "period of restoration" was longer.

After the fire, Harleysville refused to pay the full value of Bi-Economy's claim for actual damages, agreeing to pay only about \$163,000 of this claim. After Bi-Economy submitted its claim to alternative dispute resolution, it was awarded more than \$407,000. In addition, Harleysville offered to pay only seven months of Bi-Economy's business interruption claim, even though the policy provided for 12 months, and Bi-Economy never resumed business operations.

Harleysville argued that exclusions in its policy precluded the type of damages being sought by Bi-Economy, but the Court was not convinced that such provisions could block Bi-Economy's claim:

The consequential "losses" [referenced in the exclusion] clearly refer to delay caused by third party actors or by the "[s]uspension, lapse or cancellation of any license, lease or contract." Consequential "damages," on the other hand, are in addition to the losses caused by a calamitous event ... and include those additional damages caused by a carrier's injurious conduct — in this case, the insurer's failure to timely investigate, adjust and pay the claim.

Conclusion

Insurance companies will probably resist any application of this rule when the policyholder does not suffer the same fate as Bi-Economy. The Court of Appeals did not suggest, however, that this remedy would be limited to situations where the policyholder goes out of business. When an insurance company's misconduct causes damages to a policyholder, it should not have to cease operating altogether to receive full compensation for its insurance company's breach of its duty "to timely investigate, adjust and pay the claim." ▲