

## **Bad Faith Consequential Damages Against Insurer for Unreasonable Delay in Adjusting a Fire Claim**

By John W. Fried

An insurer's initial delay, followed by further penny-pinching delay, in the adjustment of a fire claim merits consequential, bad faith damages for its policyholders, based on the insurer's breach of the covenant of good faith and fair dealing in its homeowner's insurance policy. That was the holding of the court in *Carden v. Allstate Insurance Co.*, 912 N.Y.S.2d 867 (Sup. Ct., Westchester Co. 2010).

On January 31, 2007, the policyholders' home was substantially damaged by fire. Due to that damage, the policyholders could not reside there, and they had to rent another residence. In March 2007, Allstate's adjuster inspected the home and offered to settle the loss for \$265,000. Thereafter, the policyholders retained an environmental consultant who discovered mold in the home caused by the intrusion of rain through the damaged roof. The consultant recommended that the house be gutted. In June 2007, Allstate made a final settlement offer of \$575,000. The policyholders refused to accept that offer.

Thereafter, the policyholders demanded that the loss be determined by appraisal under a provision in Allstate's homeowner's policy. The policyholders sought costs of repair in the amount of \$1 million. Allstate estimated the costs of repair to be \$750,000. In December 2007, an umpire selected by the parties determined the costs of repair to be \$832,000. Allstate delayed until the spring of 2008 to pay the award, and then the home was reconstructed.

Due to the delay in the settlement process and subsequent reconstruction, the policyholders were forced to remain out of their home for 18 months. Allstate's policy covered 12 months of Additional Living Expenses ("ALE"). It refused to reimburse the policyholders for the extra 6 months of ALEs.

The policyholders sued Allstate seeking to recover, in part, their unreimbursed 6 months of ALEs, and they moved for summary judgment on this claim.

The court granted the policyholders' motion. The court recognized well-established New York law that all contracts, including insurance policies, contain an implied covenant of good faith and fair dealing, that "a reasonable insured would understand that the insurer promises to investigate in good faith and pay covered claims," and that "when an insurer breaches its duty to investigate, bargain, and settle claims in good faith, consequential damages for breach of contract may be recovered not limited by the amount specified in the insurance policy." The court then held that Allstate had breached its policy's implied covenant of good faith and fair dealing and granted the policyholders summary judgment, as to liability, on their claim for payment of the extra 6 months of ALEs.

### **Lesson of this case: Don't be bullied by insurance companies.**

*[Editor's Note: John W. Fried is a Partner at Fried & Epstein LLP, which regularly represents policyholders in insurance coverage disputes. He is a frequent speaker and author on the subject of insurance coverage law and practice. Information concerning Fried & Epstein's Insurance Coverage Practice Group may be obtained by visiting the firms' website at [www.fried-epstein.com](http://www.fried-epstein.com). The opinions expressed in this article are solely those of the author and do not necessarily reflect the views of Fried & Epstein or its clients. Responses to this article are welcome. Copyright 2011 John W. Fried.]*