



Insurer Engaged in Unfair Practices By Failing to Make Reasonable Settlement Offers Following Verdict Against Insured

In *Vermont Mutual Insurance Co. v. Toland, et al.*, tenants Chester Robinson and Lorraine Hames (collectively, "Tenants") brought suit in Massachusetts Superior Court against their landlord, Edward Toland, and the owner of the property they leased, Cogavin Associates LLC ("Cogavin"), for breach of the covenant of quiet enjoyment and violation of Chapter 93A. The Tenants alleged that Cogavin's negligence led to a fire in the building that forced them to move out. Vermont Mutual Insurance Company ("Vermont Mutual") provided indemnity insurance for Cogavin and took the position that its policy did not cover some of the Tenants' claims. During the litigation, Vermont Mutual offered \$30,000 to settle the claims.

The Superior Court case went to trial and "rapidly went south for the defense." After the jury returned its verdict but before the judge ruled on the Chapter 93A claim, Vermont Mutual raised its settlement offer to \$112,026. The Superior Court then found that Cogavin violated Chapter 93A and entered an aggregate judgment in the amount of \$405,511.51. After the verdict, Vermont Mutual only increased its prior settlement offer by \$864.13. One year later, after Cogavin had filed an appeal, Vermont Mutual offered to settle for \$126,436.95.

Vermont Mutual then commenced a declaratory judgment action in federal court, and the Tenants counterclaimed under G.L. c. 176D and Chapter 93A, alleging that Vermont Mutual had failed to make reasonable settlement offers. The court (Judge Young) agreed and explained that the purpose of G.L. c. 176D is to discourage insurers from forcing claimants into unnecessary litigation to obtain relief. The court stated that the insurer "must make a sensible settlement offer when liability is reasonably clear." Although the court found that Vermont Mutual's pre-trial offers were not unreasonable, its continued low offers after the verdict, when liability became "pellucidly clear," were unreasonable. The court noted that Vermont Mutual had not offered "a scintilla of evidence of error in the Superior Court." The court ordered Vermont Mutual to pay the Tenants' attorneys' fees in the federal action.

This decision serves as an important reminder that insurers who continue to refuse to settle on reasonable terms after a verdict against their insured do so at their peril.

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