

**SOUTHERN CALIFORNIA****LOS ANGELES COUNTY****INSURANCE****Bad Faith — Breach of Contract — Business Law****Co.'s property damage loss not fully compensated by insurance****VERDICT**      **\$3,170,000**

**CASE**            Amerigraphics v. Mercury Casualty Company, No. BC331524

**COURT**        Superior Court of Los Angeles County, Central, CA

**JUDGE**        Mary Ann Murphy

**DATE**           2/20/2008

**PLAINTIFF**

**ATTORNEY(S)**    James Osborne, Law Offices of James Osborne, Sherman Oaks, CA  
                          W. Todd Stevenson, Law Office of Todd Stevenson, Sherman Oaks, CA

**DEFENSE**

**ATTORNEY(S)**    Thomas J. Dowling, Hager & Dowling, Santa Barbara, CA

**FACTS & ALLEGATIONS** On April 12, 2003, business property of plaintiff Amerigraphics, Inc., a three-person, high-end graphic design and printing business, was damaged when a ruptured water heater on the second floor of their office building in Sherman Oaks caused a small flood, which leaked down to their office on the first floor. As a result of the flood, the electrical systems of Amerigraphics's scanner and large format printer were permanently damaged and not repairable. During the remediation process, mold caused by the water was discovered and Amerigraphics had to relocate to another building in an adjacent town.

During the year following the loss, Amerigraphics incurred \$90,000 of normal operating expenses coverage. Mercury never paid the normal operating expenses, and also never disclosed the existence of the coverage. During that same year, Amerigraphics alleged that it incurred losses of \$73,000 for tenant improvements. Mercury's outside adjuster recommended paying \$45,000. Twenty-three months later, Mercury paid Amerigraphics approximately \$23,000 for tenant improvements.

Mercury also took possession of the scanner and large format printer equipment, and did not return it or replace it for over 650 days. During that time, Amerigraphics went out of business.

Amerigraphics sued Mercury Casualty Company for breach of contract and breach of the implied covenant of good faith and fair dealing for failing to provide coverage for business property and normal operating expenses suffered as a result of the flood, for not disclosing the existence of coverage for normal operating expenses of \$90,000, for delaying payment for two years to pay \$23,000 out of a \$45,000 claim for tenant improvements, and for not repairing the printer and scanner.

Amerigraphics's insurance expert, David Peterson, opined that Mercury's actions were not within the standard of care in the insurance industry because Mercury failed to timely investigate or evaluate the claim; used improper and nonexistent standards to deny the claim; unreasonably delayed payment of the claim; failed to advise Amerigraphics of existing coverage; and failed to comply with state regulations which required the carrier to have property claims-handling guidelines for 2003-2004.

Defense counsel argued that \$23,000 was reasonable, that the printer and scanner were timely repaired, and that Amerigraphics refused to pick up the equipment because they wanted to go out of business. Mercury did not dispute that Amerigraphics had coverage under their business policy for normal operating expenses, which were never paid. At trial, Mercury's Senior Vice-President of Claims, Jo Anna Moore, admitted that Mercury had no property claim handling guidelines for 2003-2004.

**INJURIES/DAMAGES** Amerigraphics asked the jury for \$17,000 for the printer and scanner; \$91,000 for the normal operating expenses; \$ 22,000 for tenant improvements (the difference between the \$23,000 paid and the \$45,000 recommended by Mercury's outside adjuster); and prejudgment interest of \$40,000, for a total of \$170,000. Amerigraphics also recommended that the jury assess punitive damages at 20 times compensatory damages.

Defense counsel argued that all money owed under the policy of insurance by Mercury was paid. Defense counsel suggested a range for punitive damages of \$250,000 to \$500,000.

**RESULT** The jury returned a verdict in favor of Amerigraphics, finding breach of the implied covenant of good faith and fair dealing, and that Mercury acted with malice, fraud and oppression. Amerigraphics recovered a total of \$3.17 million in damages.

Five jurors who held automobile policies with Mercury Casualty Company voted in favor of the verdict against their own insurance company.

**AMERIGRAPHICS.**    \$3,000,000 punitive damages  
                               \$170,000 compensatory damages  
                               \$3,170,000

**DEMAND**            \$1,100,000 (under C.C.P. 998)  
**OFFER**                None

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# SOUTHERN

**TRIAL DETAILS** Trial Length: 12 days  
Jury Vote: 12-0  
Jury Composition: 3 male, 9 female

**PLAINTIFF  
EXPERT(S)** David F. Peterson, Esq., insurance,  
Oak View, CA

**DEFENSE  
EXPERT(S)** Gail Montoure, C.P.C.U., C.L.U.,  
F.L.M.I., insurance, Las Vegas, NV

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

*-Joseph Falso*