

ALERT

Insurer's Denial of Defense Based on Wage-and-Hour Exclusion Held To Be Bad Faith

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Applying Washington law, the United States District Court for the Western District of Washington has held that an insurer acted in bad faith when it denied coverage for an employee class action suit against its insured on the ground that the suit was an excluded "wage and hour" claim. *Travelers Cas. & Sur. Co. of Am. v. Spectrum Glass Co.*, 2012 WL 3780356 (W.D. Wash. Aug. 31, 2012).

An employee of the insured filed a putative class action suit against the insured, alleging breach of contract, violation of the Washington Minimum Wage Act, violation of the state statute governing unpaid wages on termination, payment of wages "less than entitled" under state law, failure to provide required meal and rest breaks, willful refusal to pay wages, and violation of the Washington Consumer Protection Act. The insurer determined that coverage was limited to a sublimit of \$100,000 for defense expenses and denied further coverage based on an exclusion for "claims under an express employment agreement or sums sought solely on the basis of a claim for unpaid services" and an exclusion for "alleged violations of wage-and-hour laws." In the coverage litigation that followed, the insured asserted a claim for bad faith.

The district court granted summary judgment in favor of the insured. According to the court, the insurer unreasonably refused to further defend the insured as to the underlying breach-of-contract, failure-to-provide-meal-and-rest-breaks, and Consumer Protection Act claims because the exclusions on which the insurer relied did not clearly apply. To begin with, the court noted that the "express employment agreement" exclusion did not cap the insurer's defense obligation at the \$100,000 sublimit and therefore imposed no ceiling on defense expenses even if it applied. Furthermore, the court found that it was

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"perfectly conceivable" that the claims were not wage-and-hour claims and therefore not subject to the sublimit based on the wage-and-hour exclusion cited by the insurer. According to the court, the fact that the plaintiffs sought back pay did not, of itself, convert the claims into excluded wage-and-hour claims. The court therefore concluded that the insurer had denied coverage without a valid basis.

The court also determined that the denial had been in bad faith, finding that the insurer "offer[ed] no support for the notion that *any* investigation preceded its determination as to the applicability of the sublimit," that the insurer's initial coverage correspondence "did not analyze coverage at all, let alone analyze coverage as to particular claims," and that the insured was harmed by the insurer's refusal to continue the defense.

The opinion is available [here](#).