

**Georgia Farm Bureau Mutual Insurance Company v. Pawloski, 284 Ga. App. 183 (February 14, 2007).**

**FACTS:**

Plaintiffs sued Georgia Farm Bureau (“GFB”) under a homeowners’ policy, seeking coverage for water and mold damage following an October, 2002 pipe burst at the residence. Plaintiffs submitted a claim and, in March, 2003, GFB issued Plaintiffs a payment. Plaintiffs rejected the payment as insufficient to cover the damages.

In July 2003, GFB arranged for an evaluation of Plaintiffs’ residence by an environmental consulting firm. This firm informed GFB that elevated levels of mold had been identified in the residence and recommended relocation of Plaintiffs pending the completion of a mold remediation. Plaintiffs alleged that GFB did not follow the recommendation and that GFB did not take any further action on the claim following July 2003.

The policy contained the following limitation: “Suit Against Us. No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of the loss.”

On July 8, 2004, Plaintiffs brought suit against GFB in contract and tort alleging that GFB’s failure to repair the water damage resulted in the growth of toxic mold. GFB moved for summary judgment on the grounds that the action was barred by the suit limitation. The trial court denied GFB’s Motion and the decision was appealed.

**HELD:**

The Georgia Court of Appeals reversed the trial court, holding that an insurance policy provision placing a one year limitation on the right of the Plaintiff to sue the GFB was generally valid and enforceable, assuming that GFB did not waive this contractual limitation. In review of the record, the Court found no evidence demonstrating waiver or fraudulent inducement on the part of GFB and, accordingly, summary judgment to the insurer was proper.

**RATIONALE:**

The Court focused on the lack of evidence demonstrating fraudulent inducement, affirming that “mere negotiation for settlement, unsuccessfully accomplished, is not that type of conduct designed to lure the claimant into a false sense of security so as to constitute a waiver of the limitation defense.” Specifically, “evidence that [GFB] investigated and offered to settle does not suggest that it tried to trick [Plaintiffs] into believing that it intended to enlarge the one year limitation period.” In so holding, the Court distinguished Owners Insurance Company v. Ogden, 275 Ga. 565 (2002) on the grounds that the insurer in Ogden was attempting to rely on the contractual limitation to avoid paying an amount it had already conceded that it owed. In the instant case, GFB had not conceded that it owed Plaintiffs anything more than the \$7,247.43 Plaintiffs rejected. Further, GFB’s failure to act on the environmental consulting firm’s recommendation amounted to an implicit denial of liability for any mold damages.

**Certain Underwriters at Lloyd's of London v. Rucker Construction Company, Inc., 285 Ga. App. 844 (June 15, 2007)**

**FACTS:**

Certain Underwriters at Lloyd's of London ("Lloyd's") insured a bulldozer owned by Plaintiff. Plaintiff left the bulldozer in a fenced pasture with the key in the ignition. The bulldozer was subsequently stolen and submerged in a pond. Plaintiff submitted a claim, which Lloyd's denied based on the "Locked Vehicle Warranty" exclusion. The Policy stated: "we will not pay for any loss or damage caused by, resulting from, contributed to or aggravated by theft, including attempted theft, from any one vehicle covered or any one owned vehicle covered unless the covered property is contained in a fully enclosed and securely locked body or compartment and the theft results from forcible entry, evidenced by visible marks."

Plaintiff filed suit for breach of contract, seeking compensatory damages and bad faith. Lloyd's moved for summary judgment based on the exclusion. Plaintiff responded, claiming that the policy was ambiguous because it excluded coverage due to theft *from* any one vehicle covered, but did not exclude coverage due to theft *of* a vehicle; and because a bulldozer was not a vehicle as defined under the policy. The trial court denied summary judgment.

Plaintiff later received a jury verdict, awarding damages and bad faith penalties. Lloyd's appealed, but the Court of Appeals affirmed the verdict.

**HELD:**

The Court of Appeals declined to rule on Lloyd's objection regarding the summary judgment motion, as the challenge was rendered moot by the subsequent entry of verdict and judgment. However, the Court considered Lloyd's contentions regarding its motions for directed verdict and judgment notwithstanding the verdict at trial, both of which raised the same arguments.

In so doing, the Court held that an ambiguity existed in the policy with regard to whether the policy covered theft *of* a vehicle. The Court further held that a jury could determine that a bulldozer was not a vehicle under the policy and was not subject to the exclusion. Accordingly, the jury was entitled to find for Plaintiff on the issue of bad faith, as Lloyd's could not say as a matter of law that it had a reasonable defense in light of Lloyd's having notice of the ambiguity.

**RATIONALE:**

The Court held that the provision at issue in the warranty was genuinely ambiguous. The warranty excluded coverage for damages "caused by theft from any one vehicle", but nonetheless defined "equipment" and "vehicle" differently. Accordingly, evidence existed to support the jury's findings that the bulldozer constituted "contractor's equipment", which would not be a "vehicle" subject to the exclusion. In addition, testimony from Lloyd's adjuster indicated that the phrase "theft from a vehicle" as worded in the policy, could be construed to mean "theft of the vehicle's component parts" and not the vehicle itself. The Court held that this testimony demonstrated that a reasonable insured could have come to the same conclusion, and reiterated that insurance contracts are to be read in accordance with reasonable expectations of the insured where possible. In light of the above, the Court ultimately held that, based on the

ambiguity, the trial court did not err in submitting to the jury the question of whether the bulldozer was either a “vehicle” excluded from coverage under the policy, or “contractor’s equipment” that was not excluded from coverage.

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