

FEDERAL COURT

Todd v. Mountain West Farm Bureau Mutual Ins., CV 98-66-BLG, 3/10/00

VERDICT: \$210,275 to insurer, arson counterclaim.

A Billings jury found that Colin Todd intentionally caused his home to be burned and that Mountain West Farm Bureau Mutual Ins. was entitled to cancel the policy retroactive to when it was issued because of concealment or misrepresentation of material facts on the application which were not waived, thereby entitling it under its counterclaim to recover \$5,000 living expenses paid to Todd, \$201,275 it paid to Green Point Mortgage, and \$4,000 for debris removal, less the \$1,039 premium. It also found that Todd intentionally concealed or misrepresented a material fact or circumstance relating to the proof of loss contents claim, thereby relieving Mountain West of having to pay any compensation for his personal property loss. Judgment was entered for Mountain West for \$210,275 and costs with post-judgment interest.

Todd's home in Paradise Valley was completely destroyed by fire 7/1/97 . He testified that he was traveling on the West Coast at the time. The fire department concluded that the fire had been electrical. Neither Todd nor Mountain West was notified until 7/31.

Adjuster Rick Gaines thereafter noticed that the fire debris was devoid of the usual living contents. He requested a cause & origin investigation. Chris Rallis found the fire to be incendiary in origin and found remnants of 3 gas containers in the hallway and under a staircase next to the garage. Todd admitted removing the sheetrock wall between the garage and staircase for extra storage.

A contents search revealed none of the metal items claimed. On 12/23/97 the claim manager stated that the company had no real proof to withhold payment any longer and offered Todd approximately \$6,800 for contents in exchange for a release of claims.

In 2/98 Todd's claim was denied for material misrepresentation on the application as to his occupation, whether someone would always be present at the home when he was away, and whether he had ever been investigated for criminal activity. The right to contest the claim on grounds of arson was reserved.

In 2/98 Mountain West offered to release its counterclaim for the amount paid to the mortgagee (\$201,375) in exchange for a release of all claims, additional living expense advanced pending investigation (\$5,000), and debris removal (\$4,000). Todd sued in 4/98, including alleging bad faith; Mountain West counterclaimed for its payments under the policy.

Plaintiff's Experts: None.

Defendant's Expert: Chris Rallis, Sioux Falls (Fire Cause & Origin).

Demand, none; offer, defense costs 30 days before trial. Jury request, \$65,000 plus punitives; jury suggestion, \$0.

Jury deliberated 5 hours 5th day; Magistrate Anderson.

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Michael Wheat & Julieann McGarry (Cok, Wheat, Brown & McGarry), Bozeman , for Todd; Randall Nelson, Billings , for Mountain West.

