

Donovan, et al. v. Catlin Specialty Ins. (verdict)

FEDERAL COURT

VERDICT: Defense, insurance bad faith claims stemming from failed TIC investments.

Victor & Rita Donovan, Richard & Betti Hill, and George & Gertrude Stevens invested in tenant-in-common 1031 exchanges in 2008 through IFG Investments, a California company insured by Catlin Specialty Ins. The investment sponsor, DBSI, led bankruptcy 6 months later. Plaintiffs' out-of-pocket investment losses were about \$2 million. They sued IFG and settled in 2013, but only after Catlin and IFG had reached a settlement in which Catlin funded amounts beyond its policy limits and transferred the claims resolution to IFG in exchange for a policy release in 2011. Catlin interrelated 17 DBSI claims within its \$2 million-per-occurrence limit. Plaintiffs contended that the \$8 million aggregate limit applied. The policy was governed by New York law. Plaintiffs led a bad faith suit alleging misrepresentation of the policy.

Magistrate Strong ruled in 2014 that Catlin reasonably applied its \$2 million limit to the 17 DBSI claims. (MLW 8/30/14). Thereafter, Plaintiffs claimed that it failed to offer sufficient funds from the \$2 million limit, violating §33-18-201(6). Defense counsel had evaluated the settlement range at \$500,000 to \$850,000, but at mediation offered \$100,000 to \$200,000. Magistrate Johnston excluded evidence of the IFG/Catlin settlement as irrelevant and excluded Plaintiffs' settlement with IFG as outside the legal landscape of the claims-handling period, 2009-11.

A Helena jury found that Catlin proved by a preponderance of the evidence that it had a reasonable basis in law or fact for contesting the claim or the amount of the claim.

Plaintiffs' expert: attorney Donald Harris, Billings (deposed, standard of care required of insurers in adjusting claims).

Defendant's expert: Robert Zepp, Great Falls (insurance adjusting best practices, claims handling standards).

Offer, \$75,000. Jury request, \$1,050,000 plus punitives; jury suggestion, 0. Tracy Axelberg, mediator.

Jury deliberated 2 hours 5th day.

Donovan, Hill, and Stevens v. Catlin Specialty Ins., CV-14-06-H, 7/29/16.

Linda Deola & Scott Peterson (Morrison, Sherwood, Wilson & Deola), Helena, for Plaintiffs; Randall Nelson (Nelson & Dahle), Billings, and Martha Sheehy (Sheehy Law Firm), Billings, for Catlin.