

## Refusal to Renew Policy Is Not Bad Faith

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A California federal court, applying California law, has granted in part and denied in part an insurer's motion for partial summary judgment regarding a policyholder's claims for bad faith and punitive damages. *Atmel Corp. v. St. Paul Fire & Marine Ins. Co.*, 2006 WL 708944 (N.D. Cal. Mar. 21, 2006).

In doing so, the court held that: (1) the insurer's refusal to renew the policy; (2) the insurer's alleged violations of California Insurance Code Section 650; and (3) the insurer's rescission of the policy on the basis of unintentional misrepresentations or concealment on the application did not amount to bad faith as a matter of law. The court further concluded as a matter of law that the insurer's refusal to renew the policy likewise did not constitute bad faith. Finally, the court determined that it could not conclude as a matter of law that the insurer's refusal to defend the policyholder was reasonable, as the policyholder had produced sufficient evidence to raise a question of fact regarding that issue.

The policyholder company made computer chips. In 2001, before the company completed an insurance application for a 2002-2003 E&O policy, a client allegedly informed it that some of its computer chips were defective. The company did not disclose this fact on the application when asked by the insurer whether it had "knowledge or information of any act, error or omission which might reasonably be expected to result in an Errors and Omissions claim." Ultimately, the client sued the company, and the case settled. The company submitted the claim to the insurer for coverage, and the carrier denied any obligation to defend the claim. The company filed this declaratory judgment action in 2004, and, immediately thereafter, the insurer rescinded the policy. This 2002-2003 policy was renewed before the policyholder initiated the declaratory judgment action but was subsequently non-renewed.

The company initially moved for partial summary judgment on the ground that the insurer's unilateral rescission of the policy was a breach of the duty to defend. The court rejected this motion in an unpublished opinion (*Atmel I*) (summarized in the December 2005 issue of *The Executive Summary*). The company subsequently moved for partial summary judgment, arguing that California Insurance Code Section 650 precluded the insurer from unilaterally rescinding the policy. In a published opinion (*Atmel II*) (summarized in the April 2006 issue of *The Executive Summary*), the court granted the company's motion, concluding that Section 650 precludes an insurer from unilaterally rescinding a policy once a policyholder files a coverage action. The insurer then brought a motion for partial summary judgment regarding the company's bad faith and punitive damage claims.

The court generally denied the insurer's motion regarding the bad faith claim, concluding that it could not find, as a matter of law, that the insurer had acted reasonably in refusing to defend the company because the company had provided sufficient evidence to raise a factual question regarding whether there was a "genuine dispute" about coverage. The court did, however, partially grant the insurer's motion as to alleged bad faith relating to several discrete issues, including: (1) the insurer's refusal to renew the policy, (2) alleged violations of California Insurance Code Section 650 and (3) the "Fraud and Misrepresentation" clause in the policy.

With respect to the insurer's refusal to renew the policy, the court rejected the company's contention that the refusal constituted bad faith, because "in the absence of statutory provisions to the contrary," which were not present here, "an insurer may refuse to renew a term policy for any reason, or for no reason at all." Regarding California Insurance Code Section 650, the court rejected the company's assertion that any violation of the statute was bad faith, noting that the argument conflicted with the court's decision in *Atmel II*, in which it determined that Section 650 does not provide "a substantive advantage to the insured in the event that the insured files suit before the insurer rescinds the policy."

Addressing the third discrete issue, the court rejected the contention that there was a bad faith rescission because the "Fraud and Misrepresentation" clause in the policy required (either on its face or because the clause created ambiguity about the issue) the insurer to show that the policyholder committed intentional fraud before rescinding the policy, and such intentional conduct was not shown. The court found this argument to be an impermissible attempt to revisit the holding of *Atmel I*, in which the court found that the "Fraud and Misrepresentation" clause did not require intentional misrepresentation or concealment on an insurance application.

The court then summarily denied the insurer's motion for partial summary judgment with respect to the company's punitive damage claim, holding that "the Court cannot conclude as a matter of law that [the company's] evidence is insufficient to warrant the award of punitive damages."