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Ninth Circuit Affirms Trial Verdict of Insurer's Breach

The Ninth Circuit Court of Appeals affirmed a trial verdict finding that an insurer breached its duty to defend, and evidence that the insurer failed to conduct a proper investigation supported denial of its motion for summary judgment on the issue of bad faith.

Millennium Laboratories, Inc. v. Darwin Select Ins. Co.

(Ninth Circuit Court of Appeals, January 27, 2017)

Case No. 15-55227

2017 WL 382345

Millennium Laboratories filed suit against Darwin alleging breach of the duty to defend and bad faith in regard to two third-party suits involving advertising injury and disparagement claims. Darwin had disclaimed coverage on the basis of a prior noticed claims exclusion. The court denied Darwin's summary judgment motion, finding that the insured could not have provided any prior notice because the disparagement claim occurred during Darwin's policy period. Thereafter, the jury concluded that Darwin had committed bad faith in failing to conduct a proper investigation. On appeal, the Ninth Circuit affirmed in part and reversed in part. The Court affirmed that Darwin was obligated to defend Millennium, as the claims against Millennium, including claims of disparagement, potentially fell within the policy's coverage for personal and advertising injury. It also affirmed the district court's denial of Darwin's motion for summary judgment on the bad faith claim, finding that the evidence showed Darwin failed to conduct a proper investigation and instead anticipated denying the claims from the outset by assigning the claims to inexperienced employees and hiring outside counsel in anticipation of a lawsuit. Finally, with respect to Darwin's duty to defend Millennium through appeal in one of the two underlying lawsuits, the Court of Appeals reversed the district court, finding that Darwin's duty had terminated because by the time Millennium appealed and moved for a new trial, the case contained no potentially covered claims.

To view the opinion, click [HERE](#).

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