

Supreme Court - Civil

INSURANCE: Insurer provided reasonable explanation for denial of advance pay claim... denial by insurer v. insured... Watters affirmed.

In 10/99 Drywall contractor Dan Ensey fell from a tripod ladder while working for Bakken Drywall. His lawyer asked Bakken to notify insurers. Colorado Casualty wrote to Ensey's lawyer indicating that it was investigating. In 1/00 Ensey sent a demand letter requesting advance pay of lost earnings and medicals. He contended that liability was clear because Bakken had breached its duty to provide reasonably safe scaffolding. In 2/00 **James Halverson** wrote to Ensey's lawyer stating that he had been retained by Colorado Casualty. In 3/00 he informed Ensey that Bakken was declining his request for advance pay because liability was not reasonably clear. He stated that his investigation indicated that there were multiple safe devices available and that Ensey had chosen the ladder over the other equipment. Ensey sued Colorado Casualty claiming that it had not responded to his demand and seeking a declaration that he was entitled to advance pay, an injunction compelling payments, and damages. Judge Watters granted summary judgment for Colorado Casualty, concluding that it had provided a reasonable explanation for denial of advance pay and that his contention that it did not respond to his demand letter was disingenuous. Ensey appeals.

Watters correctly determined that Colorado Casualty had provided a reasonable explanation for denying Ensey's claim. Ensey argues that the 3/00 letter from Halverson was from Bakken, not Colorado Casualty, and that it would subvert the UTPA to let an insured deny advance pay. However, while the duties created by §33-18-201 are clearly owed by the insurer, Halverson's letter is sufficient to be considered a response from the insurer. Ensey was well apprised that Colorado Casualty's response to his demand was being handled by Halverson. The real issue is whether the letter contained an adequate response. Colorado Casualty promptly informed Ensey that it was denying his claim and provided the specific reason. §33-18-201(14) requires no more.

Regnier, Gray, Nelson, Cotter, Trieweiler.

***Ensey v. Colorado Casualty*, 00-491, 8/9/01.**

Michael Rapkoch (Felt, Martin, Frazier, Jacobs & Rapkoch), Billings, for Ensey; **James Halverson** & Christie Hobbs (Herndon, Sweeney & Halverson), Billings, for Colorado Casualty.