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Judge Rules in New Jersey Court on Microbilt Corp vs. Underwriters at Lloyds of London and CFC

By: Joseph G. Harraka, Jr., Esq.

Chief Judge Freda L. Wolfson of the District Court of New Jersey recently ruled in *Microbilt Corporation v. Certain Underwriters at Lloyd's London and CFC Underwriting Limited* (Civil Action No. 20-12734 (FLW)) that an insurer's failure to timely pay its insured's defense fees after acknowledging that it owed the insured a defense obligation for an underlying action under its policy could form the basis for a breach of contract claim and a claim for breach of the implied covenant of good faith and fair dealing set forth in that policy contract.

Specifically, the Court in *Microbilt* determined that the plaintiff Microbilt Corporation ("Microbilt") could proceed with its breach-of-contract claim against the defendant Lloyds of London ("Lloyd's") over the insurer's alleged failure to timely pay attorneys' fees in an underlying action for which Lloyd's had agreed to provide coverage to Microbilt under a policy that it had issued. The Court denied Lloyd's motion to dismiss certain counts of MicroBilt's complaint, holding that MicroBilt had plausibly alleged that Lloyd's had caused it to incur additional expenses by delaying its payment of MicroBilt's defense fees in the underlying action. Wolfson rejected Lloyd's argument that MicroBilt failed to state a breach-of-contract claim. "Here, regardless of whether payment was required immediately or within a reasonable amount of time, the amended complaint sufficiently pleads a cause of action for breach of contract based upon failure to make timely payment," Wolfson wrote in her unpublished November 10, 2021 opinion. "The amended complaint alleges that MicroBilt provided timely notice of the [underlying claims] to defendants by providing sufficient notice to [Defendant CFC Underwriting Limited], Wolfson continued. "Defendants acknowledged their duty under the Policy to reimburse legal fees and expenses, and despite their acknowledgement, Defendants failed to fully pay MicroBilt's counsel fees for at least sixteen months."

In its breach of contract claim set forth in its amended complaint, MicroBilt claimed that, despite Lloyd's acknowledging its duty to reimburse its insured's legal bills for the underlying action on Jan. 10, 2020, MicroBilt still had not received payment at the time the action was filed on Sept. 15, 2020, after eight months.



“Put simply, regardless of whether reimbursement for plaintiff’s legal expenses was required within a reasonable amount of time or immediately upon notice of the claims and attorney invoices, these allegations are sufficient to at least sustain a claim for breach of contract,” Wolfson said. “Moreover, the mere fact that defendants have reimbursed plaintiff’s legal expenses, in full, does not extinguish plaintiff’s claim, since plaintiff claims damages resulting from the delay in payment. The court construes defendants’ purported breach of the policy as arising from their late payment, not their refusal to pay.” But Wolfson added a caveat. “That said, however, the court notes that having examined these circumstances in the context of insurance coverage disputes, courts have generally found that an insurer’s failure to timely furnish payment in accordance with the terms of an insurance policy, creates a cause of action for breach of the implied covenant of good faith and fair dealing, not breach of contract.”

For more information on this newly issued opinion and its coverage implications or if you have any questions, please reach out to our Firm through our Chair of the Insurance Coverage Group and Co-Practice Leader of our Trucking and Logistics Group, Joseph G. Harraka, Jr., Esq. (jgharraka@becker.legal), via email, or by phone at (973) 422-1100.

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