

Thursday, February 9, 2012

BAD FAITH Insurance firm ordered to pay punitive damages

LIBERTY MUTUAL OWES \$12 MILLION, JURY SAYS



J. ALBERT DIAZ

R. Hugh Lumpkin, Meghan Moore and Allen Bonner of Ver Ploeg & Lumpkin worked the case that led to the award.

by Susannah Nesmith, Special to the Review. A jury ruled a dispute over product defect claims that were settled by Liberty Mutual should cost the insurance company \$12.5 million in punitive damages.

MI Windows and Doors filed a counterclaim after the insurer settled five defective window claims over its objections. The manufacturer said Liberty Mutual settled four without even telling the company.

A federal jury delivered a complex verdict, dividing fault between both sides on breach of contract issues. But the same panel also determined Liberty Mutual acted in bad faith and delivered punitive damages.

R. Hugh Lumpkin, the manufacturer's attorney at Ver Ploeg & Lumpkin in Miami, said the company denied its product was defective and wanted to pursue the issue at trial. **SEE STORY, PAGE A3**

PRODUCT LIABILITY Insurer settled, window company wanted trial

LIBERTY MUTUAL OWES \$12.5 MILLION, JURY RULES

by **Susannah Nesmith**
Special to the Review

Liberty Mutual Fire Insurance should pay \$12.5 million in punitive damages for settling product defect claims with homeowner associations when the manufacturer wanted to take the cases to trial, a South Carolina jury decided.

MI Windows and Doors and its corporate parent, J.T. Walker Industries, claimed the insurance company settled the claims over MI Windows' objections and without telling it in four of five of the defect cases.

"It's important for companies that make things in the United States to be able to defend themselves in court," said MI Windows' attorney, R. Hugh Lumpkin of Ver Ploeg & Lumpkin in Miami. "My clients told them, 'There is no product defect here. Let's go to trial.'"

Colleagues Meghan Moore and Allen Bonner of Ver Ploeg & Lumpkin also worked on the case, which was heard by U.S. District Judge Margaret B. Seymour in Columbia, South Carolina.

Gratz, Pennsylvania-based MI Windows supplied **SEE INSURANCE, PAGE A4**



J. ALBERT DIAZ

R. Hugh Lumpkin, the manufacturer's attorney at Ver Ploeg & Lumpkin in Miami, was assisted by colleagues Meghan Moore and Allen Bonner. Lumpkin said the company denied its product was defective and wanted to pursue the issue at trial.

FROM PAGE A3

INSURANCE: Miami lawyer for window maker said company denied product defect

thousands of windows and sliding glass doors to developers in South Carolina. In five cases filed against the company, homeowners claimed the windows were defective. MI Windows argued the windows and doors may have been installed incorrectly, but there was nothing wrong with what the company delivered.

The insurance company settled four of those claims for less than the \$500,000 deductible and one for exactly \$500,000, Lumpkin said.

Under the policies, MI would reimburse Liberty Mutual for its defense and indemnity costs up to \$500,000, and Liberty Mutual would be responsible for the remainder up to \$1 million.

MI Windows was not even consulted in four of the settlements, Lumpkin said. When Liberty sued MI Windows in 2008 to recover the money it had advanced to settle the cases, the company filed a breach of contract counterclaim, arguing the settlements breached the insurance policy, damaged the company's reputation and exposed it to further litigation.

Boston-based Liberty Mutual's attorney, Morgan S. Templeton of Wall Templeton & Haldrup in Charleston, South Carolina, declined to comment because litigation is still pending.

Lumpkin also was circumspect in his comments because he said he expected post-trial litigation in the case.

MIXED VERDICT

After the seven-day trial, the jury deliberated for most of a day before reaching its complicated verdict. The jury was asked to determine whether Liberty

INSURANCE VERDICT

To MI Windows and Doors

\$12.5 million

Punitive damages

\$684,416

Bad faith

\$18,290

Breach of policy

To Liberty Mutual

\$894,416

Breach of policy

Mutual and MI Windows breached the terms of the policies. The jury found fault on both sides, awarding money back and forth based on claims from both sides.

The jury found that MI Windows was liable for the \$894,416 that Liberty paid to settle the claims.

Then the jury found Liberty acted in bad faith and should pay MI Windows \$684,416 for acting in bad faith plus \$18,290 that it charged MI Windows as a handling fee. The net effect of the compensatory damage verdicts was \$19,710 in favor of Liberty

Mutual.

But the jury also awarded \$12.5 million in punitive damages to the window maker, finding Liberty Mutual breached the implied covenant of good faith and fair dealing in the insurance policies.

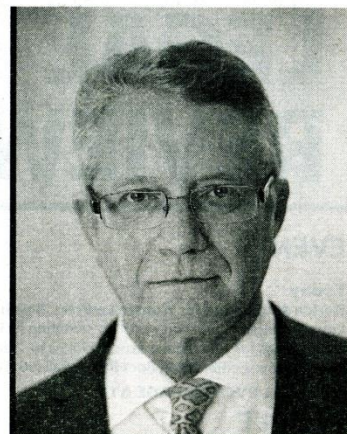
"My clients are pleased with the verdict," Lumpkin said. "This is a company that has been in business since the 1950s."

The disputed claims resulted in state court cases being filed by homeowner associations from 2002 to 2005, claiming defective products allowed water to intrude in homes and cause progressive property damage.

MI bought three one-year policies from Employers Insurance of Wassau and three more from its successor, Liberty Mutual, covering the company from 1997 to 2003. The company switched in 2003 to Zurich North America.

In a 2010 decision, the federal judge granted partial summary judgment to Liberty Mutual on some of the settlement issues.

"MI Windows argues that the requirement in the SSIs (special servicing instructions) that Liberty Mutual discuss settlements with MI Windows makes the policies ambiguous with regard to whether Liberty Mutual has sole discretion to settle tendered cases," Fletcher wrote. "Based on the plain language of the contract, MI Windows does not have the right to approve settlement decisions."



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**R. HUGH LUMPKIN
PARTNER
VER PLOEG & LUMPKIN**

The judge found, "A discussion does not require MI Windows' approval of settlements."

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