

Breach of Contract / Bad Faith

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Ashley A. Noel

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Ashley Noel obtained a judgment of dismissal on behalf of a commercial general liability insurer following a bench trial in the Judicial District of New Haven of the Connecticut Superior Court.

The plaintiff, a manufacturer of pre-fabricated garages, constructed and installed a garage on a residential property. Several months after the installation was complete, the homeowners claimed that the plaintiff's subcontractor struck a sewer pipe while digging the foundation for the garage, resulting in significant damage to the property. The homeowners subsequently filed a claim with the plaintiff's commercial general liability insurer. During the course of the insurer's investigation into the claim, the plaintiff and its subcontractor maintained that they were not responsible for severing the sewer pipe. The insurer therefore denied the claim, and indicated that it would defend the plaintiff in the event the homeowners filed a lawsuit. Nevertheless, the plaintiff chose to unilaterally pay the homeowners' claim. The plaintiff subsequently brought an action for breach of contract, common law bad faith, recklessness, and violation of the Connecticut Unfair Trade Practices Act and the Connecticut Unfair Insurance Practices Act against its insurer.

At trial, Attorney Noel raised the special defense that the plaintiff violated the "no voluntary payment" provision of its policy by unilaterally settling the homeowners' claim without its insurer's consent. Despite initially claiming that his insurer orally disclaimed coverage for some of the homeowner's claims, the plaintiff's representative conceded on cross-examination that his insurer was willing to defend the plaintiff in the event it was sued, and therefore never denied the plaintiff a contractual benefit. After the plaintiff rested, Attorney Noel moved for a judgment of dismissal on the ground that the plaintiff failed to make out of a *prima facie* case on any of its claims. The Court granted such motion following extensive post-trial briefing, agreeing that the plaintiff violated the no voluntary payments clause.