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Victims of Insurer's Bad Faith to Get Big Award

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CHICAGO (CN) - An insurer acted in bad faith by refusing to cover mold and water damage to the home of a Wisconsin couple, the 7th Circuit ruled.

Craig and Nancy Miller first saw their future Milwaukee home in 2003, but waited two years to buy the house while the owner stained the exterior stucco walls. The seller expressly told the couple that she wasn't aware of any mold or water issues.

A home inspector who found a "soft spot" on the roof estimated that repairs would cost just \$1,500.

Safeco Insurance Company of America issued the Millers a homeowner's policy on June 30, 2005, covering all "accidental direct physical loss."

As the Millers made payments on their policy over the next month, and began renovations, they discovered significant water damage and existing mold.

Safeco denied their claim, explaining that the pre-purchase inspection report had confirmed multiple areas of water damage. It said the loss thus qualified as a pre-existing condition outside of the policy period.

But the Millers argued that the insurer could not rely on the policy terms since it did not send such notice to the couple until late July, after they discovered the damage.

U.S. District Judge William Callahan Jr. awarded them more than \$485,000 in damages, finding that Safeco could not apply the policy's exclusions toward the Millers under Wisconsin law until after it provided them with a copy of the policy terms.

Finding that Safeco had acted in bad faith by denying coverage, Callahan determined that the Millers could recover punitive damages as well.

The 7th Circuit affirmed Monday.

"Allowing an insurer to take premiums 'and then deny liability based on an exclusion of which the insured was not aware because the insurance company had not informed him or her of the exclusion or given him or her the means to ascertain its existence' would be unjust," Judge John Tinder wrote for a three-member panel.

Because Wisconsin's case law was clear, the court determined, Safeco lacked a reasonable basis for denying benefits and acted in bad faith.

The court also affirmed that the Millers will be able to recover prejudgment interest from Safeco.

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