



Samuel H. Ruby
San Francisco,
Shareholder-in-Charge

Direct Dial: 415.352.2723
Fax: 415.352.2701
Email Attorney

Jordan II: Bad Faith and the Duty to Investigate

By Samuel H. Ruby

Just as Michael Jordan walked away from his first and second stints on the basketball court a winner, Mary Ann Jordan has again emerged victorious from the California Court of Appeal. However, like Michael, she may find the third act more difficult.

Ms. Jordan made a claim for damage to her home caused by the *Poria* fungus. Allstate denied the claim, citing a "wet or dry rot" exclusion. Allstate obtained a summary judgment in the trial court, but in what will now be known as *Jordan I*, the Court of Appeal reversed, finding that the exclusion was ambiguous in light of the policy's additional coverage for "entire collapse" caused by "hidden decay." The court determined that the rot exclusion would bar claims for rot damage not amounting to an "entire collapse," but that Jordan could potentially recover if she could prove an "entire collapse." *Jordan v. Allstate Ins. Co.*, 116 Cal. App. 4th 1206 (2004).

The court remanded the case for trial of that issue, but prior to trial, Allstate again attacked the bad faith claim. In a motion for summary adjudication, Allstate argued that its interpretation of the policy – though rejected by the Court of Appeal – had at least been reasonable. So, even if there was an "actual collapse," Allstate would at most owe policy benefits but have no extracontractual liability. The trial court agreed, and once again, Jordan appealed. In what will be known as *Jordan II*, the Court of Appeal again reversed. *Jordan v. Allstate Ins. Co.*, --- Cal. App. 4th --- (2007), 2007 WL 852632.

The court held that although Allstate's interpretation of the policy had indeed been reasonable, the crux of Jordan's bad faith claim was that Allstate had inadequately *investigated* the possibility of an "entire collapse." The court found that Jordan had raised triable issues regarding the adequacy of the investigation and again remanded the case for trial. Unfortunately, the court's opinion skirts the issue of proximate cause – given Allstate's interpretation of the policy, what difference would it have made if Allstate had done more investigation? Perhaps that issue will be addressed on remand.

Notably, in order to immediately appeal the dismissal of her bad faith claim, Jordan dismissed her breach of contract claim. Thus, while her bad faith claim survives for trial, it is all that survives. Whereas before, she might have recovered policy benefits merely by proving that there was an "entire collapse," now she will also have to prove that Allstate acted unreasonably. Stay tuned for *Jordan III*.

Meanwhile, *Jordan II* is required reading for any insurer considering a motion for summary adjudication of a bad faith claim. It also summarizes the available remedies in bad faith cases and comments on the admissibility of violations of fair claim regulations.