UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NO JS6

CIVIL MINUTES - GENERAL

Case No.	2:21-cv-05995-RGK-AS	Date	July 1, 2022
Title	***Weber Metals, Inc. v. ACE American Insurance Company et al***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Joseph Remigio	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Defendant's Motion for Partial Summary Judgment [DE 74]**

I. INTRODUCTION

On June 28, 2021, Weber Metals, Inc. ("Plaintiff") sued ACE American Insurance Company ("Defendant") for breach of an insurance contract and breach of the implied duty of good faith and fair dealing. (*See* ECF No. 1-1.) Presently before the Court is Defendant's Motion for Partial Summary Judgment. (ECF No. 73.) For the following reasons, the Court **GRANTS** Defendant's Motion.

II. FACTUAL BACKGROUND

The following facts are undisputed:

Defendant issued a policy insuring Plaintiff's 48-foot Mesta-Pahnke closed-die forging press (the "Mesta Press"), which Plaintiff used to forge aircraft components. The structural frame of the Mesta Press comprises four columns that are attached to upper and lower crossheads by sixteen tie-rods. The policy insures the Mesta Press "against all risks of direct physical loss or damage occurring during the period of this Policy from any external cause, except as hereinafter excluded or limited" (the "All-Risk Provision"). (Mot. Summ. J., Ex. A at 14, ECF No. 74-5.) The All-Risk Provision excludes "loss, damages or expense caused by or resulting from . . . faulty workmanship . . . [or] [g]radual deterioration." (*Id.* at 16–17.) Plaintiff's policy also includes a boiler and machinery endorsement (the "Endorsement"), which provides that Defendant "shall be liable for" losses "resulting from an Accident to an Object," up to $50 million. (*Id.* at 38.) The Mesta Press is an "Object," and the Endorsement defines an "Accident" as "a sudden and accidental breakdown of an Object or a part thereof." (*Id.*) An "Accident," however," does not include loss from "deterioration." (*Id.* at 41.)

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On September 21, 2008, four of the Mesta Press's sixteen tie-rods fractured, and Plaintiff discovered cracks in two of its four columns. Plaintiff filed an insurance claim, which Defendant acknowledged on September 25, 2018. Defendant initially retained Engineering Design & Testing Corporation ("ED&T") to evaluate the cause of the damage and cost of repairs. On October 9, 2018, ED&T emailed Defendant's claims adjuster, stating that: "Regarding the cause, our preliminary view is that one of the tie bars fractured as a result of fatigue . . . causing the other tie bars to fracture and the columns to crack." (Opp'n, Ex. 7, ECF No. 78-10.) Ten days later, the adjuster generated a report recommending that Defendant reserve $56 million to cover losses. (Opp'n, Ex. 9, ECF No. 78-12.) Defendant then discharged ED&T and retained Failure Analysis & Prevention, Inc. ("FAP") to further "investigate the cause of the fracture of the tie-rods and the cracking in the columns." (Opp'n, Ex. 32, ECF No. 78-35.)

FAP investigated over 20 months, testing the fractured tie-rods and a sample from one of the two cracked columns, and ultimately issued a report on June 15, 2020. (*See* Opp'n, Ex. 32.) The report concluded that the "[f]racture of the bottom tie-rods and the cracking of the columns was caused by fatigue." (*Id.* at 18.) With respect to the tie-rods, it concluded that the "heat tightening procedure performed on the bottom tie-rods on July 31, 2008 resulted in a reduction in bottom tie-rod pretension to a value lower than specified by the manufacturer." (*Id.*) Over time, according to the report, this reduction "increased the alternating stresses in both the tie-rods and columns, which resulted in the initiation and propagation of fatigue cracks." (*Id.*) With respect to the columns, the report concluded, "Evidence of extension of the column cracking due to the fracture of the tie-rods was not observed." (*Id.*)

On July 14, 2020, Defendant sent a letter to Plaintiff, denying its claim in full. (*See* Opp'n, Ex. 33, ECF No. 78-36.) The letter cited FAP's conclusions that (1) "the tie rods failed as a result of the failure to properly pre-tension the tie rods in accordance with the manufacturer's approved guidelines in 2008"; and (2) cracking in the columns was "fatigue cracking which had occurred over the course of the operation of the press" and "was not related to, or made worse by, the failure of the tie rods." (*Id.*) Adopting these conclusions, Defendant determined that the "faulty workmanship" and "gradual deterioration" exclusions preclude coverage for the fractured tie-rods under the All-Risk Provision, and the "gradual deterioration" exclusion precludes coverage for the cracked columns under the All-Risk Provision. Under the Endorsement, according to the letter, damage to the tie-rods and columns did not result from an "Accident" because it occurred over time and is therefore not covered.

On February 18, 2021, Plaintiff sent a letter asking Defendant to reconsider its denial, along with an investigative report by L. Raymond & Associates ("LRA"). (*See* Mot. Summ. J., Ex. G, ECF No. 74-11.) Defendant rejected LRA's report and declined Plaintiff's request on March 14, 2021. (*See* Mot. Summ. J., Ex. H, ECF No. 74-12.) Plaintiff subsequently initiated this lawsuit.

III. JUDICIAL STANDARD

Under Federal Rule of Civil Procedure 56(a), a court may grant summary judgment only if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). On issues where the moving party does not have the burden of proof at trial, the moving party is required only to show that there is an absence of evidence to support the non-moving party's case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). Upon such a showing, the Court may grant summary judgment on all or part of the claim. Fed. R. Civ. P. 56(a).

To defeat a summary judgment motion, the non-moving party may not merely rely on its pleadings or on conclusory statements. *Celotex*, 477 U.S. at 324. Nor may the non-moving party merely attack or discredit the moving party's evidence. *See Nat'l Union Fire Ins. Co. v. Argonaut Ins. Co.*, 701 F.2d 95, 97 (9th Cir. 1983). The non-moving party must affirmatively present specific admissible evidence sufficient to create a genuine issue of material fact for trial. *Celotex*, 477 U.S. at 324. The materiality of a fact is determined by whether it might influence the outcome of the case based on the contours of the underlying substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Disputes over such facts amount to genuine issues if a reasonable jury could resolve them in favor of the nonmoving party. *Id.*

IV. DISCUSSION

Defendant moves for summary judgment on Plaintiff's claim for breach of the implied duty of good faith and fair dealing ("bad faith claim").

To constitute bad faith, an insurer's conduct must have been "prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act." *Careau & Co. v.. Bus. Credit, Inc.*, 222 Cal. App. 3d 1371, 1395 (1990). "Sloppy or negligent claims handling does not rise to the level of bad faith." *Chateau Chamberay Homeowners Ass'n v. Associated Int'l Ins. Co.*, 90 Cal. App. 4th 335, 351 (2001).

A plaintiff asserting bad faith in an insurer's refusal to pay policy benefits must demonstrate (1) that benefits were due under the policy and (2) that their withholding was unreasonable. *Love v. Fire Ins. Exchange*, 221 Cal. App. 3d 1136, 1151 (1990). The reasonableness of an insurer's actions must be evaluated "under the facts of the particular case" and "in light of the totality of the circumstances surrounding its actions." *Wilson v. 21st Century Ins. Co.*, 42 Cal. 4th 713, 723 (2007). Its actions must also be evaluated "as of the time that they were made." *Chateau Chamberay*, 90 Cal. App. 4th at 347. "While the reasonableness of an insurer's claims-handling conduct is ordinarily a question of fact, it

becomes a question of law where the evidence is undisputed and only one reasonable inference can be drawn from the evidence." *Id.* at 346.

Defendant argues that there is no evidence that it acted unreasonably. Plaintiff responds with the following evidence:

- Defendant discharged its first technical expert (ED&T) and hired a different technical expert (FAP) after ED&T made a preliminary finding that one tie-rod fractured, causing three more tie-rods to fracture and two columns to crack, and after ED&T recommended that Defendant reserve $56 million to cover losses.
- Defendant sent Plaintiff a letter in September 2019—before FAP completed any testing—that stated, "FAP's preliminary analysis . . . does not support the conclusion that the columns cracked when the tie bars broke." (Opp'n, Ex. 30, ECF No. 78-30.)
- Defendant took nearly two years to investigate Plaintiff's claim before ultimately denying it. In particular, there was a seven-month lag after FAP sampled the column and before FAP issued its report.

According to Plaintiff, this evidence suggests that Defendant conducted a delayed, "outcome-oriented investigation." (Opp'n at 1.)

Plaintiff also offers a different interpretation of the conclusions in FAP's report. According to Plaintiff, California's "efficient proximate cause doctrine"—which provides that when "a loss is caused by a combination of covered and specifically excluded risks, the loss is covered if the covered risk was the efficient proximate cause of the loss"—compels granting coverage. FAP concluded that faulty workmanship and deterioration together caused the first tie-rod to fail and the columns to crack, but the Endorsement does not exclude faulty workmanship. Also, three tie-rods failed suddenly because the first tie-rod fractured. Plaintiff therefore argues that the "efficient proximate cause" of its loss was a covered risk, and as such, Defendant's decision to deny the claim was unreasonable.

Plaintiff's evidence, however, is not enough for a jury to find that Defendant acted unreasonably or in bad faith. At most, it suggests that Defendant breached the insurance contract by making a mistake or being negligent; but mistakes and negligence alone do not constitute bad faith. "There is no *factually supported* suggestion in this record that (1) [Defendant] ever misrepresented the nature of its investigatory activity, (2) provided any false documents or testimony, (3) did not honestly select independent experts to make the appropriate loss evaluations, (4) relied upon expert reports that were not reasonable or, (5) failed to conduct a thorough investigation." *Chateau Chamberay*, 90 Cal. App. 4th at 349. As such, the only reasonable conclusion from the evidence is that Defendant did not act in bad faith, even if it was wrong in denying coverage to Plaintiff.

Because the evidence is insufficient for a reasonable jury to find bad faith, it is also insufficient for a reasonable jury to find "oppression, fraud or malice" for punitive damages. *See* Cal. Civ. Code § 3294.

Accordingly, the Court grants summary judgment to Defendant on Plaintiff's bad faith claim and prayer for punitive damages.

V. CONCLUSION

For these reasons, the Court **GRANTS** Defendant's Motion.

IT IS SO ORDERED.

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