

Washington Appellate Court Finds Insureds' Failure to Provide Statutory Notice of Intent to Sue Did Not Void Default Judgments Against Insurer

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In *Gates v. Homesite Insurance Co.*, the Washington Court of Appeals held that the plaintiff-insureds' failure to provide 20 days' notice of intent to sue its insurer, though required by statute, was a mere "procedural irregularity" insufficient to void the default judgments entered against the insurer. The court also noted that the insurer's failure to timely respond to the lawsuit was the result of an "internal communication issue" and not an extraordinary circumstance warranting relief. The plaintiffs, Jason and Amanda Gates, purchased a home in 2018 and obtained insurance from defendant Homesite Insurance Co. Shortly after moving in, the Gates learned that the previous occupants used drugs in the home. Sampling revealed methamphetamine residue in excess of state clean-up guidelines. The Gates made a claim with Homesite for loss of personal property and structural damage, which Homesite denied based on exclusions for "discharge or release of pollutants or chemicals" and "loss prior to the policy period." Following the denial, the Gates hired an attorney to pursue coverage for their losses. In May 2018, the Gates' attorney wrote Homesite a letter stating, "[We] understand that the activities resulting [in] the methamphetamine contamination occurred before the Homesite policy took effect, and that damage to the structure is therefore not covered." The letter also explained that the Gates were still seeking coverage for personal property losses, "which occurred when the family moved their possessions into the home and exposed them to the chemical residue during the policy period." Ultimately, Homesite paid the Gates for their damaged personal property but maintained its denial of coverage for the structural damage. On January 28, 2019, the Gates sued Homesite for breach of contract and violations of the Insurance Fair Conduct Act, seeking compensation for their structural damage. The Gates failed to give Homesite 20 days' notice of their intent to sue, as required by the Insurance Fair Conduct Act; however, the Office of the Insurance Commissioner accepted service on January 29, 2019, and

forwarded the summons and complaint to Homesite the next day. The Homesite employee who received the suit papers did not inform others in the company about the lawsuit. As such, Homesite did not appear or respond to the complaint and, in March 2019, the Gates obtained a default judgment against Homesite for their remediation costs, plus interest. In August 2019, they also obtained a supplemental judgment for attorneys' fees and costs. One year later, the Gates contacted Homesite seeking to collect on the judgments. At that point, Homesite filed a notice of appearance and moved to set aside the judgments for good cause, and to vacate the judgments for mistake, inadvertence, or excusable neglect. The trial court concluded that the default judgments were void because the Gates pursued their claims without giving Homesite the required statutory notice. Homesite then moved for partial summary judgment on the Insurance Fair Conduct Act and breach of contract claims, both of which were granted. The Gates appealed, arguing the trial court improperly vacated the default judgments. The Washington appellate court agreed with the Gates that, because Homesite received lawful service of the summons and complaint, their failure to provide 20 days' notice of intent to sue, as required by the Insurance Fair Conduct Act, did not deprive the court of personal or subject matter jurisdiction. The court also noted that Homesite's failure to respond to the complaint was because of an "internal communication issue" and emphasized that "[w]e have repeatedly concluded that a company's failure to respond to a properly served complaint because of an internal communication issue does not warrant relief." Finally, the appellate court rejected Homesite's claim that the Gates engaged in misrepresentation and misconduct. Homesite claimed the May 2018 letter from the Gates' attorney agreeing there was no coverage for structural damage was misleading, as it allegedly caused Homesite to believe the Gates would not sue. The court disagreed, finding that the Gates' actions did not amount to misrepresentation or misconduct and that there were no extraordinary circumstances warranting relief from the default judgments. The appellate court therefore vacated the trial court's orders of dismissal and remanded the case to the trial court to reinstate the default judgments.

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