# A MODERN DAY DAVID VERSUS GOLIATH STORY: AN INSURANCE COMPANY DEFEATED IN EFFORT TO DENY SMALL BUSINESSMAN=S CLAIM

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This is a story of a small businessman whose insurance company tried to avoid paying a business threatening claim by a large business against him. Galantly, he took on his insurance company. Despite the use of intimidating tactics, he has so far prevailed in court, but may be facing a long appeal.

Bob owns a trucking company which operates in the Central California Valley hauling agricultural products from farms to plants where they are processed. It is a tough business. Competition is high, scheduling difficult, and it involves long days and hard work for Bob and his employees.

Two years ago, one of Bob=s trucks picked up a load of almonds from a location near Chico. It was to be delivered to a processing plant north of Modesto. The trailer was loaded by the farmer, and Bob=s driver pulled it to the drop point. It sat there for 3 days waiting for the plant owners to unload it into the Apits@ for processing. Upon unloading, a plant employee noticed that the almonds were a Afunny color@. The unloading stopped but not before the trailer almonds had contaminated several hundred thousand dollars worth of plant almonds that were already in the processing stage, and also some of the equipment. The trailer which hauled the almonds had not been cleaned properly; residue from pesticides still remained in the trailer when the almonds were loaded.

The plant owners looked to Bob for indemnification for their loss. Bob promptly

contacted his insurance broker to make a claim under his $1 Million dollar commercial trucker=s liability insurance policy. All would be OK, he thought. After all, this is why I have paid tens of thousands of dollars in premiums. There was no question that Bob=s company was negligent in not seeing that the trailer had been cleaned of the pesticide before it was loaded with the almonds. Bob knew that, and so did his insurance company. The insurance policy included liability for damages Aarising out of the ownership, maintenance, or use of a covered vehicle,@ which definition, included the trailers. So, Bob expected his carrier to intervene and negotiate a resolution with the plant owners. It was essential because his hauling contract with the plant owner provided a substantial part of his revenues. He needed to maintain this relationship. If the plant owners were not compensated he faced the loss of a contract, and subsequent survival of his business threatened.

Bob=s claim was processed, but rather than work with Bob to investigate the facts and confirm the coverage; the insurance company immediately questioned whether there was Acoverage@ for this Aoccurrence.@ It did not investigate the facts which would have established the insurance company=s responsibility for the loss. Instead they ignored Bob=s company=s letters about how the loss occurred, assumed the loss occurred otherwise, and relied on two Aexclusions@ to deny his claim. Bob=s broker wrote a letter appealing the decision. The company was told how serious of a threat this was to his business. These appeals were ignored. Instead the insurance company hired a lawyer to file suit against Bob claiming that there was Ano coverage@ for the loss. Now Bob was faced with two lawsuits: one from the plant owners and one by his own insurance company. Not only was his business threatened, but he had to also incur legal expenses to defend the plant owner=s claim, which was threatened, and the lawsuit by

his own insurance company which had been filed.

Bob hired a lawyer, and had to pay him on an hourly basis. He fought the insurance company lawsuit and his lawyer filed a counter-action for breach of contract and insurance Abad faith,@ seeking amounts to pay the plant owners, attorneys= fees, and damages to Bob=s business because the claim was not timely acknowledged and a settlement reached with the plant owners using the liability limits of his policy.

The case went on for over two years. Finally, after a lot of work by Bob=s lawyer and continued resistance by the insurance company lawyers (who changed lawyers a couple of times in the legal fracas), the insurance company capitulated and settled the case with the plant owners (for a substantial discount, which damaged Bob=s relationship with this customer).

But, the insurance company did not give up. It sought reimbursement for what it paid to the plant owners from Bob. He was faced with a claim for several hundred thousands dollars in this reimbursement action. In response, he pursued his breach of contract and insurance bad faith claim.

Well, the story does not end on a happy note, but on at least a temporarily positive note: Bob Awon@ his case in the trial court. The court ruled that all the exclusions that the insurance company threw at Bob were invalid B without merit, bogus. Bob did not have to pay the insurance company back. Also the jury awarded Bob just under $500,000 in other damages to pay him for having to sue to get what his insurance company owed him.

Now there is some relief. He does not have to pay back the insurance company, and may get some personal reimbursement himself for his significant expenses and losses. He still is hauling for the plant owners, but they have Acharged@ Bob for the difference between what the

insurance company settled for and the short fall from the full amount of their claim. And, Bob faces an expensive appeal when the insurance company pursues a reversal of the jury=s decision.

With heavy hurricane and tornado losses in the South and East this year, insurers will find options to reduce costs and pay outs. The question is whether they will take loses out on their insureds by imposing non-meritorious positions to try to reduce claims payments.

Bob could have given up. What he did was fight. It cost emotional damage to himself and his wife, and his business is still threatened because he has large borrowings which will have to be paid. Hopefully, he will prevail ultimately, but not without the pain and anxiety of having to fight the corporate Goliath. Good for David. Keep up the fight.

P.S. I need to disclose that I testified as an expert witness on insurance company Agood faith@ claims handling practices on behalf of Bob at his trial. I outlined how the insurance company failed to meet the Agood faith@ claims handling requirements in California.

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