

VINT, CCB, AWF

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My family owns a small apartment complex in Astoria. In 2004, we hired a local company, Kiwi Glass, to replace all of the old aluminum frame windows at the complex with new vinyl windows. Prior to hiring Kiwi, we verified with the Oregon Construction Contractors Board that they were licensed, bonded and insured. According to the CCB, Kiwi had a general liability policy that covered any damage caused by their negligence.

Unfortunately, shortly after work was completed, our tenants began reporting large amounts of water leaking into their units. Kiwi attempted to stop the leaks on several occasions with new caulking, but their efforts were unsuccessful. Eventually, we hired an inspector to remove some of the new window trim and siding in order to investigate the issues. We were horrified to discover that the windows that Kiwi had installed had leaked so much that they had rotted out sections of the wall sheathing and studs, soaked the insulation and damaged the interior drywall.


After discovering the damage, we contacted Kiwi, who in turn contacted their insurance company, American Family ("AmFam"). We expected AmFam to investigate the damage and offer a reasonable settlement in order to compensate us for the damage caused by their insureds' negligent work. Sadly, they did nothing of the sort. AmFam refused to deal with us at all and made it clear that they would not get involved unless we filed a lawsuit. Having no other options, we filed suit in Clatsop County. We made several attempts to mediate the case, but the insurance company made it clear that they were not interested in negotiating in good faith. AmFam offered us \$20,000 on the eve of trial despite the fact the our repair costs were well over \$100,000.

The lawyer that AmFam hired to defend Kiwi Glass made it clear that AmFam was trying to inflict as much economic pain on us as possible by taking the case to trial and making us spend a great deal of money on legal fees and costs. He also let us know that AmFam would appeal any verdict against Kiwi and do everything within their power to make us spend money unless we accepted their low-ball offer. We refused. Our case went to trial in August 2009. After two weeks of testimony, the jury found that the damages caused by Kiwi's negligence were \$140,000. As expected, AmFam denied coverage and refused to pay the judgment. We were told by our attorneys that the AmFam adjuster acknowledged that AmFam didn't have any valid coverage arguments, but also didn't have anything to lose by denying coverage since there are no consequences in Oregon for bad faith conduct by insurance companies.

After many more months of negotiations, mediations and appeals, we finally settled for less than the jury had awarded us. AmFam told us repeatedly that they would deny any obligation to cover Kiwi and appeal the verdict as long as they could and that they could afford to fight longer than us. Unfortunately, they were right. Despite the injustice of it all, our finances were no match for theirs.

We feel like as though we have been let down by the legal system. We did our due diligence by making sure that the contractor we hired had insurance that would cover any damage caused by its negligence. We didn't realize that insurance companies in Oregon can deny claims in bad faith, refuse to settle and deny coverage to their insureds, all without consequences.

  
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Zita Nyitrai

  
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