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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BRIDAL IMAGES, INC.,

Plaintiff and Appellant,

v.

TRUCK INSURANCE EXCHANGE,

Defendant and Respondent.

B213083

(Los Angeles County Super. Ct.
No. BC370315)

APPEAL from a judgment of the Superior Court of Los Angeles County, Reginald
Dunn and John Shepard Wiley, Jr., Judges. Affirmed.

The Marks Law Firm, Inc. and Scott A. Marks for Plaintiff and Appellant.

Tharpe & Howell, Johnna J. Hansen; Greines, Martin, Stein & Richland, Robert
A. Olson and Peter O. Israel for Defendant and Respondent.

Plaintiff and appellant Bridal Images, Inc., appeals from a portion of the judgment in favor of defendant and respondent Truck Insurance Exchange following the granting of a motion for summary adjudication of its cause of action for breach of the covenant of good faith and fair dealing. Bridal Images contends that triable issues of fact exist as to whether there was a “genuine dispute” (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 723 (*Wilson*)) concerning Truck’s liability for the claim, whether Truck reasonably relied on advice of its counsel in denying the claim, and whether there was evidence of fraud, malice or oppression. We conclude that the undisputed evidence showed that Truck reasonably and in good faith had a genuine dispute as to whether Bridal Images presented false or misleading information to Truck in the course of presenting the claim. Therefore, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Allegations of the Complaint

Bridal Images operates a retail bridal store and has an insurance policy issued by Truck which covers property damage caused by water. On October 30, 2005, water from a sprinkler head caused damage to approximately one third of the store. On April 10, 2006, Truck sent a letter concluding that Bridal Images had misrepresented and concealed information in presenting its claim, rendering the policy void. Therefore, Truck denied the claim. On April 30, 2007, Bridal Images filed a complaint against Truck for breach of contract and breach of the implied covenant of good faith and fair dealing based on Truck’s failure to properly investigate the facts or make a reasonable evaluation of damages and unreasonable withholding of benefits.

Motion for Summary Adjudication and Supporting Evidence

On October 26, 2007, Truck filed a motion for summary adjudication of the cause of action for breach of the covenant of good faith and fair dealing, as well as the claim for punitive damages, on the grounds that a genuine dispute existed concerning Truck's obligation to pay the claim, Truck reasonably relied on the advice of its counsel in denying the claim, and Bridal Images had no evidence of malice, oppression or fraud to justify an award of punitive damages.

Truck submitted the declaration of adjuster Jeff Triplett in support of the motion. Triplett was assigned to the claim and met with Bridal Images' owner Robert Rothstein for a site inspection. Rothstein told him that all of the damaged goods were in one dressing room. The damaged goods presented for inspection filled half of a dressing room. When Triplett asked to inspect and photograph each item, Rothstein stated that he did not have time for this, because he needed to open the store, and he did not want Triplett to conduct the inspection alone. Triplett retained the salvage company Greer & Kirby to conduct an inventory of the damaged items, but Rothstein would not release the items until after he had conducted his own inventory.

Triplett reviewed Bridal Images' claim history. Truck paid Bridal Images for three water loss claims in three years: \$181,461.18 for a claim resulting from an overflowing toilet on November 8, 2002; \$103,156.63 for a claim resulting from a sprinkler system malfunction on December 2, 2003; and \$378,295.82 for a claim resulting from a broken pipe on July 8, 2004. Bridal Images had retained damaged items from the July 8, 2004 claim for their salvage value. Bridal Images filed a water loss claim on March 27, 2005, as the result of an overflowing toilet, but Truck had not paid any money on the claim.

Triplett retained a forensic investigator to inspect the sprinkler. On November 4, 2005, the investigator reported that the sprinkler had discharged because: (1) someone or something had hit the sprinkler head, compromising its integrity; (2) the temperature in the area in which the sprinkler head was located rose enough to cause it to discharge;

or (3) the sprinkler head was defective, although the defect rate for fire sprinkler heads was one in a million.

Rothstein gave a copy of his inventory of the damaged items to Greer when he turned over the damaged items. Greer forwarded Rothstein's inventory list to Triplett.

On November 8, 2005, Triplett sent a reservation of rights letter to Bridal Images. The letter acknowledged the water loss reported on October 30, 2005, and stated that Truck had not completed its investigation into the loss. The letter set forth the insured's duties under the policy provisions and stated that Truck intended to invoke the conditions of the policy. "[N]o action or statement of any of the company's representatives in the course of investigation should be construed as a waiver. Forms for your convenience in preparing the Proof of Loss are enclosed." Truck requested that Bridal Images sign the letter acknowledging that Truck was reserving its rights under the policy until the investigation was complete. The sentence preceding the line for the insured's signature states that the policy holder has not attempted to deceive the insurer. The letter was signed by Triplett, although the printed signature block stated that the letter was from Truck Commercial Claims Examiner Jennifer Kuehler.

Based on the information he had, Triplett was concerned about whether the claim was valid. He asked Truck's special investigation unit to conduct an investigation, including a background check.

On November 9, 2005, Rothstein sent a letter and his inventory of the damaged items cross-referenced to specific attached invoices. Triplett received the information on November 11, 2005. Rothstein wrote, "I have worked tirelessly to prepare for you the Cliff Notes/Details of our loss. Even the condensed version is overwhelming. I have broken it up into sections for readability – all invoices are [numbered] and correspond to [a] typed section." In reviewing the inventory, Triplett noticed several invoices appeared to duplicate other invoices, some invoices appeared to have been altered, several invoices predated the July 8, 2004 water loss claim, and the total amount of items seemed greater than the amount of damaged goods he had seen in the dressing room during his site inspection.

Greer completed its physical verification of Rothstein's inventory list and orally informed Triplett of its conclusions. The labels had been removed from the dresses and other items prior to Greer's receipt. Greer concluded that 59 dresses, 9 veils and 11 accessories listed on Rothstein's inventory were not among the damaged items. Rothstein called Greer on November 16, 2005, and said a box had been left behind and was disposed. Greer sent a written report of its conclusions on January 11, 2006.

Rothstein signed the reservation of rights letter on behalf of Bridal Images and returned the proof of loss form on November 22, 2005. The form requested the total amount of the claim and a list of the damaged items. For both, Rothstein wrote "see attached." However, no list of damaged items was attached.

Triplett concluded that Truck needed an independent evaluation of the claim by coverage counsel, including an examination of the insured under oath. He forwarded the matter to the law firm Knapp & Spurlock for a determination of whether the policy benefits should be paid. Triplett provided Knapp with all of the information that he had, including the inventory and the supporting documentation received from Bridal Images, the forensic investigation report, photographs taken at the site, the report of the special investigation unit, his log notes, policy information, and the loss report.

Knapp sent a letter to Triplett on December 2, 2005, stating concerns from its initial review of the materials. Knapp recommended an examination under oath of Bridal Images and sent a letter to Bridal Images demanding the examination.

On March 27, 2006, Knapp sent an opinion letter to Triplett recommending that Truck deny the claim based on misrepresentation, concealment of material information, and failure to cooperate in the investigation. Knapp found 6 invoices appeared to have been altered, 13 invoices appeared to be duplicate submissions, one gown had been identified as returned, and in 71 instances, Bridal Images identified one item on its inventory and stated the item's value as the total value of a supporting invoice which included other items. Knapp stated that Bridal Images failed to adequately explain the discrepancies in the examination. Moreover, Bridal Images had submitted a new package of documents with substantially fewer gowns listed and a lower amount claimed for those

gowns. Relying on Knapp's opinion that the claim should be denied, Triplett sent a letter prepared by Knapp denying the claim.

Opposition to Motion for Summary Judgment and Supporting Evidence

Bridal Images opposed the motion for summary adjudication on the ground that Truck could not assert the genuine dispute defense, because it intentionally ignored evidence in favor of Bridal Images while developing a false pretext to deny the claim, breached its duty to investigate by focusing solely on facts to justify denial of the claim, breached its duty to communicate, and violated California's Fair Claims Settlement Practices. In addition, Bridal Images argued that relevant facts were not disclosed to Truck's counsel and no one with authority to bind Truck relied on advice of counsel.

Bridal Images submitted Rothstein's declaration. Rothstein declared that during Triplett's site inspection on November 2, 2005, Triplett agreed that the cause of the loss was obviously a broken sprinkler head. Rothstein showed Triplett some of the damaged property but did not remember telling Triplett that all of the damaged goods were in one fitting room. Rothstein was moving the damaged and undamaged inventory around the store in order to attend to customers.

Rothstein told Triplett that it would be difficult to prepare the information supporting Bridal Images' claim for presentation to Truck for several reasons. He explained that Bridal Images uses the components of different dresses to create a unique wedding dress. A dress that appeared to be a single damaged wedding dress was a combination of two or more wedding dresses. Therefore, the sum of the parts of the dresses would exceed the cost shown on the invoice for the base dress. A tiara or veil was created from parts of two or more other pieces. Therefore, one invoice would support a number of damaged dresses, tiaras, or veils.

Rothstein also told Triplett that some of the material used to create the dresses had come from the dresses he had re-purchased as salvage from Truck after the 2004 water

loss. His staff cut the portions of the dresses that were not damaged and used those parts to make dresses that were damaged in the 2005 loss.

Rothstein asked Triplett how to determine the value of the unique items and the documents that he should include in his information package. Triplett advised him to provide just the “Cliff Notes,” by which he meant a list of all the damaged property along with all the supporting documentation related to the damaged items. For items such as damaged furniture, Triplett said to provide documents that fairly reflected the replacement cost. Rothstein said he would provide the “Cliff Notes” and Triplett said to present the claim in any way that made sense to Rothstein. Rothstein expected that once Triplett had reviewed the information sent by Bridal Images, he would contact Rothstein to go over the information and prepare the claim together. Because Rothstein said to present the claim in any way that made sense, Rothstein believed Truck would not require any formal documentation to support the loss.

During the walk through, Triplett offered to count the damaged items and prepare an inventory list, but Rothstein replied that he wanted to do it for several reasons. Rothstein did not want business disrupted any further, because customers were scheduled for fittings over the next few days. He was also simply angry and frustrated as a result of dealing with another property loss. Rothstein promised to provide an inventory list within a few days and Triplett appeared to agree. If Triplett had demanded to count the items and prepare the inventory himself, Rothstein would have permitted it.

Rothstein sent his “Cliff Notes” on November 9, 2005. The inventory listed all of the damaged property, which included parts of salvaged dresses, parts of other dresses, the base dresses before alteration, and other damaged property. Rothstein did not intend the information to constitute a claim submission. He declared that the first information package could not have constituted a claim, because he did not know how to value the loss for the same reasons he had explained to Triplett during the walk through. Rothstein declared that the second page of his November 9, 2005 letter stated, “I am going to fast forward and give you only the ‘Cliff Notes’ per your request. Enclosed you will find all

invoices/receipts/documentations/pictures[/]reports, details to support my reimbursement request.”

Rothstein called Triplett after he received Truck’s reservation of rights letter and the proof of loss form. Triplett said Truck required Bridal Images to sign the letter and return it. Triplett told him to write “see attached” in the spaces on the proof of loss form and said they would meet later to discuss Bridal Images’ claim. Rothstein trusted Triplett and followed his instructions. He included some additional receipts. Rothstein did not intend the second submission of information to be a claim. He expected to meet with Triplett after he reviewed the materials and draft Bridal Images’ claim with Triplett’s assistance.

On December 2, 2005, Rothstein sent more information to Triplett. In the letter, Rothstein complained about the state of the store, thanked Triplett for his assistance with restoration, and asked, “When are we going to go over the original 4[-inch] packet and the ‘green tabs’ that reference trims/laces edges and components of dresses that we own that have been previously damaged. I don’t understand how you can evaluate the packet [without] the explanation of the tabs[.] . . . Actually it would be a lot simpler if we went over the packet together. [Obviously,] we need to discuss how to appropriate for trims, embroidery, trains etc. . . . that have been added to dresses that we have already been reimbursed for. Please call me at your earliest convenience.” Rothstein did not intend his third submission to be a claim.

On December 4 or 5, 2005, Rothstein received the letter requesting his examination. Frustrated and confused, Rothstein initiated a meeting with Truck management personnel Jeff Losey and Gene Nardone. Rothstein explained the nature of Bridal Images’ business and the reason he needed assistance to put his claim together. He requested help from the managers to conclude the claims process. Nardone said Triplett would meet with him to resolve the claim issues. In addition, Truck would postpone the examination.

Triplett called and told Rothstein that management personnel requested he meet with Rothstein to go over his claim. Rothstein offered to meet at the Greer office where

the damaged property was stored. Triplett said he would call back to schedule a meeting time. After a few days without a return call, Rothstein called Triplett. Triplett stated that he was no longer comfortable speaking to Rothstein and he would have to talk about the claim with the attorney at the examination.

At the examination on January 24, 2006, Rothstein testified that Triplett told him to provide the “Cliff Notes” of the loss. When he sent information to Triplett, he did not intend the information to constitute a claim. Triplett had told him to write “see attached” on the proof of loss form. He did not total the loss on the form, because he didn’t know how to value the loss, given the nature of his business. The discrepancy between his inventory and the Greer inventory resulted because Greer did not know multiple items were used to create each item, plus Greer failed to pick up two boxes and Rothstein threw them out. He did not intend to claim the full value of the component parts added to the base dress, but he did not know how to value the items. Rothstein testified that he had not submitted duplicate invoices, because one invoice could reflect the purchase of multiple items used for different dresses. He stated that he did not alter any invoices, nor did he know who might have altered them. He explained that vendors regularly send invoices that are duplicates, inaccurate, or corrected. Rothstein produced an inventory list for the examination that summarized the costs of the base dresses, without including materials he had used from other dresses. The summary was not what he felt he was entitled to receive, but the result of his frustration with the claim process.

Bridal Images also submitted Triplett’s deposition testimony. Although the policy required Bridal Images to allow Triplett to inspect the damaged items, Triplett did not insist on conducting an inspection based on the policy provisions, because Rothstein was clearly very angry and frustrated at having to deal with the water damage. When Rothstein said he would provide the “Cliff Notes” of his claim, Triplett understood that to mean a condensed version of the events, rather than lengthier narratives he had provided for prior claims. Triplett told him to present the claim however he wanted. He never told Rothstein that he was waiving the proof of loss requirement. He did not say that after he received Rothstein’s summary, they would sit down and prepare the claim together.

Rothstein told Triplett that he had been through the claim process before and Triplett would be very impressed with his ability to present a claim, because the last adjustor had been very pleased with how the claim was presented, and Triplett would have no questions in the manner in which he presented his claim. Triplett did not use the term “Cliff Notes” when he was documenting items in the claim investigation log. Triplett did not recall Rothstein explaining that because of the way the dresses were assembled by Bridal Images, different invoices would support the dress loss and he did not know how to characterize it. In the comments section of a claim investigation entry dated November 2, 2005, Triplett noted “proof of loss waived.” Based on the small number of damaged items, Triplett did not feel a proof of loss would be needed.

Triplett noted in the claim investigation log that he spoke with a Truck employee in commercial underwriting who said the policy would be cancelled on January 1, 2006, due to claim frequency and severity.

On November 8, 2005, Triplett noted in the log that he called Rothstein and confirmed that after Triplett received the package of information supporting the claim, Triplett would call him to discuss it further. The first time Triplett believed Rothstein had submitted a fraudulent claim was when he reviewed the inventory and the documentation prepared by Rothstein, because there was no way the amount of property on the list could have fit into the dressing room that he saw during the walk through. He did not call Rothstein after he received the inventory and ask for an explanation of the discrepancies, or ask why the information package was so big when the amount of the damaged items he had seen fit in a dressing room.

Jennifer Kuehler was a claims examiner who reviewed estimates and files for zone managers. After Triplett received Rothstein’s documentation, he spoke to Kuehler and recommended the file be referred to a special investigation unit. His basis for the referral was his belief that the claim was exaggerated, his concern over how the sprinkler had burst, the claim frequency and severity, and the potential exposure the claim presented. After Kuehler agreed to the referral, Triplett said that he would send a reservation of rights letter with a blank proof of loss. They wanted Bridal Images to understand that

Truck was reserving its rights under the policy. They also wanted to “get the insured’s claim”; in other words, have Rothstein state whether the amounts on the inventory were his claim. Triplett wanted Rothstein to know that Truck was investigating the claim and “see if that was in fact his claim.” The proof of loss form would establish that the package of information Rothstein was going to send was the claim that Rothstein wanted him to consider. Triplett signed the reservation of rights letter “Jennifer Kuehler/JT” on behalf of himself.

Triplett stated that he considered Rothstein’s first set of documents to be his claim for the damaged items, together with the second set of documents which included the proof of loss form. Triplett did not interpret Rothstein’s use of the term “Cliff Notes” to mean that he was not submitting a claim. He did not remember Rothstein ever saying the documents were not a claim, but rather for the purpose of sitting down to prepare a claim. After Triplett told Rothstein that Truck was reviewing the information, Rothstein told him for the first time that Bridal Images’ dresses were made by combining parts of other dresses.

Triplett told the special investigation unit not to contact Rothstein or visit the store, because he was still evaluating the receipts from Rothstein’s claim presentation.

When Triplett received and read the December 2, 2005 letter from Rothstein, he contacted Richard Knapp, told him that Rothstein sent another package of materials and requested that Knapp discuss it with Rothstein during the examination. There was no log entry in the claim diary concerning the information Rothstein sent him on December 2, 2005, nor could Triplett state when Truck received the information, but Triplett agreed the information was material to the claim. Triplett provided the information to Knapp for use during Rothstein’s examination and pointed out to Knapp that Rothstein wanted to clear up something about the way the dresses were manufactured. Triplett did not inform Knapp that Rothstein sent the December 2, 2005 letter prior to being served with notice of the examination. Triplett stated that he could recommend that Truck deny a claim, but he did not have authority to deny a claim on behalf of Truck.

During a telephone call on December 5, 2005, Rothstein told Triplett for the first time that the information packages were not his claim.

Triplett did not criticize an insurance adjuster who had paid Bridal Images benefits of more than \$300,000 for the prior claim based on the same type of documentation that Rothstein provided Triplett in connection with the instant claim.

Further Proceedings

Truck filed a reply and a hearing was held on the motion on January 17, 2008. The trial court granted the motion. After a bench trial on the cause of action for breach of contract, the trial court found Truck had breached the policy and awarded damages of \$365,554.43 to Bridal Images. Judgment was entered on October 23, 2008, incorporating the order granting summary adjudication. On November 26, 2008, the trial court entered an amended judgment which added Bridal Images' costs. Bridal Images filed a timely notice of appeal.

DISCUSSION

Standard of Review

“A trial court properly grants a motion for summary judgment only if no issues of triable fact appear and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); see also *id.*, § 437c, subd. (f) [summary adjudication of issues].)” (*Wilson, supra*, 42 Cal.4th at p. 720.) ““““We review the trial court’s decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.” [Citation.] We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. [Citation.]’ [Citation.]” (*Id.* at p. 717.)

Genuine Dispute Doctrine

Bridal Images contends triable issues of fact exist as to whether Truck breached its duties to fully investigate and fairly evaluate Bridal Images' claim, and to adequately communicate with its insured. Specifically, Bridal Images contends Triplett breached these duties by (1) omitting material facts when he referred the claim to Truck's special investigation unit, (2) instructing the special investigation unit not to speak with Rothstein, (3) omitting statements from the investigation log that Bridal Images shows it was not making a fraudulent claim, and (4) making false or misleading statements and failing to disclose material facts in conversations with Rothstein, Truck's management employees, and his notes in the claim investigation log. We conclude the evidence shows the genuine dispute doctrine applies in this case.

“The law implies in every contract, including insurance policies, a covenant of good faith and fair dealing. ‘The implied promise requires each contracting party to refrain from doing anything to injure the right of the other to receive the agreement’s benefits. To fulfill its implied obligation, an insurer must give at least as much consideration to the interests of the insured as it gives to its own interests. When the insurer unreasonably and in bad faith withholds payment of the claim of its insured, it is subject to liability in tort.’ [Citation.]” (*Wilson, supra*, 42 Cal.4th at p. 720.)

“While an insurance company has no obligation under the implied covenant of good faith and fair dealing to pay every claim its insured makes, the insurer cannot deny the claim ‘without fully investigating the grounds for its denial.’ [Citation.] To protect its insured’s contractual interest in security and peace of mind, ‘it is essential that an insurer fully inquire into possible bases that might support the insured’s claim’ before denying it. [Citation.] By the same token, denial of a claim on a basis unfounded in the facts known to the insurer, or contradicted by those facts, may be deemed unreasonable. ‘A trier of fact may find that an insurer acted unreasonably if the insurer ignores evidence available to it which supports the claim. The insurer may not just focus on those facts

which justify denial of the claim.’ [Citations.]” (*Wilson, supra*, 42 Cal.4th at pp. 720-721.)

“An insurer’s good or bad faith must be evaluated in light of the totality of the circumstances surrounding its actions. [Citations.]” (*Wilson, supra*, 42 Cal.4th at p. 723.) “[A]n insurer’s denial of or delay in paying benefits gives rise to tort damages only if the insured shows the denial or delay was unreasonable. [Citation.] As a close corollary of that principle, it has been said that ‘an insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage liability or the amount of the insured’s coverage claim is not liable in bad faith even though it might be liable for breach of contract.’ [Citation.] This ‘genuine dispute’ or ‘genuine issue’ rule was originally invoked in cases involving disputes over policy interpretation, but in recent years courts have applied it to factual disputes as well. [Citations.]” (*Wilson, supra*, 42 Cal.4th at p. 723.)

“The genuine dispute rule does not relieve an insurer from its obligation to thoroughly and fairly investigate, process and evaluate the insured’s claim. A *genuine* dispute exists only where the insurer’s position is maintained in good faith and on reasonable grounds. [Citations.] Nor does the rule alter the standards for deciding and reviewing motions for summary judgment. ‘The genuine issue rule in the context of bad faith claims allows a [trial] court to grant summary judgment when it is undisputed or indisputable that the basis for the insurer’s denial of benefits was reasonable—for example, where even under the plaintiff’s version of the facts there is a genuine issue as to the insurer’s liability under California law. [Citation.] . . . On the other hand, an insurer is not entitled to judgment as a matter of law where, viewing the facts in the light most favorable to the plaintiff, a jury could conclude that the insurer acted unreasonably.’ [Citation.] Thus, an insurer is entitled to summary judgment based on a genuine dispute over coverage or the value of the insured’s claim only where the summary judgment record demonstrates the absence of triable issues (Code Civ. Proc., § 437c, subd. (c)) as to whether the disputed position upon which the insurer denied the claim was reached reasonably and in good faith.” (*Wilson, supra*, 42 Cal.4th at pp. 723-724, fn. omitted.)

In the instant case, it is undisputed that Triplett believed the first package of information that Rothstein submitted, together with the second information package and the proof of loss form, was Bridal Images' claim. It is also undisputed that Triplett's belief was reasonable at the time he received the materials. Triplett advised Rothstein to submit Bridal Images' claim in any form that made sense to him and Rothstein sent a list of specific items with specific amounts supported by invoices. Rothstein's statement that the submission was the "Cliff Notes/Details of our loss" did not imply that it was not a claim. To verify that the information constituted Bridal Images claim, Triplett sent a proof of loss form and instructed Rothstein to write "see attached" to refer to the inventory list to claim the damaged items and total loss, which Rothstein did. Rothstein's statements on the proof of loss appeared to confirm that the inventory list was Bridal Images' claim. Bridal Images concedes on appeal that a misunderstanding existed between Triplett and Rothstein as to how Rothstein was going to document and submit the claim.

It is also undisputed that if these documents had constituted Bridal Images' claim, the information would have been misleading and fraudulent, and the policy would have been void. The trial court correctly concluded that a genuine dispute existed as to whether the policy had been voided because Bridal Images had submitted a misleading or fraudulent claim. Under the circumstances in this case, Truck was not required to believe or accept Rothstein's later statements that the submission of the inventory list and the proof of loss form were not a claim. Summary adjudication of the bad faith cause of action was proper.

DISPOSITION

The judgment is affirmed. Respondent Truck Insurance Exchange is awarded its costs on appeal.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.