

Jury Orders Liberty To Pay \$13M For Defective Window Deals

By **Allison Grande**

Law360, New York (February 06, 2012, 4:30 PM ET) -- A South Carolina federal jury on Friday found that Liberty Mutual Fire Insurance Co. should pay two policyholders more than \$13 million in damages for its improper settlement of five underlying homeowner suits over allegedly defective windows and doors.

Following a six-day trial, the jury awarded J.T. Walker Industries Inc. and its subsidiary MI Windows & Doors Inc. \$12.5 million in punitive damages for Liberty's breach of the implied covenant of good faith and fair dealing and more than \$700,000 in compensatory damages for the insurer's breaching of the subject insurance policies and acting in bad faith.

The jury also found that Walker and MI Windows had breached the terms of the insurance policies by failing to pay for the settlements of the five underlying suits that fell under their \$500,000 policy deductible, and awarded Liberty nearly \$900,000 for this breach.


Liberty sued the two companies in May 2008, seeking the recovery of the total amount it paid under the deductible to settle five underlying state court actions brought by homeowners associations.

These underlying suits alleged that certain window and door products MI Windows manufactured and installed in multifamily dwellings were defective because they allowed water to seep into the houses, causing immediate and continuing property damage from mold contamination.

Walker and MI Windows sought coverage for these actions under six commercial general liability insurance policies issued to Walker, with MI Windows named as an additional insured, covering May 1997 through July 2003.

These policies extended coverage for any claims alleging damages arising out of property damage or bodily injury, and included a provision that obligated Walker and MI Windows to reimburse Liberty for any loss within the \$500,000 reimbursement limit or deductible under each policy.

Documents

 [Verdict](#)

Case Information

Case Title

[Liberty Mutual Fire Insurance Company et al v. JT Walker Industries Inc et al](#)

Court

[South Carolina](#)

Nature of Suit

[Insurance](#)

Case Number

[2:08-cv-02043](#)

Judge

[Margaret B Seymour](#)

Date Filed

[May 29, 2008](#)

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The policies also had special service instructions that required Liberty to consult with Walker and MI Windows before the parties in the underlying suits entered into any settlement.

But Walker and MI Windows claimed that, over their objections, Liberty settled each of the five cases for less than \$500,000. The companies argued that these settlements constituted breach of contract and bad faith because there was little to no evidence that their products were defective. The insurer should have acceded to their objections because the resolutions involved only their money, they said.

The companies also contended that the settlements would harm the reputation of their products and make litigation against them more likely, that the insurer had failed to comply with the special service instructions, and that the insurer had improperly allocated a portion of its losses and defense costs to fellow insurer Zurich.

After the court in December refused to reconsider its earlier determination that the companies were not entitled to prorate any deductibles and that they must pay the full deductible for each policy triggered by progressive water damage if found liable for these sums, the case moved to a jury trial that began Jan. 26 and ended with the jury's verdict Friday.

R. Hugh Lumpkin of [Ver Ploeg & Lumpkin](#), which represented Walker and MI Windows, told Law360 Monday that his clients were pleased with the verdict, but declined to comment further due to the likelihood of forthcoming post-trial proceedings.

Liberty Mutual is represented by Morgan S. Templeton and J. Mark Langdon of [Wall Templeton & Haldrup PA](#).

JT Walker and MI Windows are represented by Phyllis W. Ewing of [Moore & Van Allen PLLC](#) and R. Hugh Lumpkin, Meghan C. Moore, W. Allen Bonner and Maria Gregory of Ver Ploeg & Lumpkin PA.

The case is Liberty Mutual Fire Insurance Co. et al. v. JT Walker Industries et al., case number 2:08-cv-02043, in the U.S. District Court for the District of South Carolina.