



Insurer's Failure to Pay Policyholder's Claim Results in Loss of Company and \$6.5 Million Recovery Against Insurer

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Imagine your growing company suffers a devastating explosion at your facility and your insurance company fails to timely pay for the repairs necessary to safely re-open your facility and get you back in business. With each passing day that you are waiting on the insurance company to assist you in restoring your facility you are losing customers, employees, lost profits and other related damages. Eventually these mounting losses cause your business to go bankrupt. Can you recover the lost profits and related consequential damages from your insurance company, even after you have gone out of business?

Many courts have acknowledged that lost profits damages are difficult to recover and are allowed only if the damages are proven to a reasonable degree of certainty. This difficulty makes sizeable settlements with insurers in such cases relatively rare.

In December 2016, attorneys at Plews Shadley Racher & Braun successfully secured an insurance recovery in the amount of \$6,500,000 for client G&S Metals Consultants, Inc., for lost profits and the consequential damages flowing from the insurance company's failure to timely pay for the necessary repairs to keep its policyholder in business. *G&S Metal Consultants, Inc. v. Continental Casualty Company*, Case No. 3:09-CV-493 JD (N.D. Ind.).

G&S Metals, a small family-owned aluminum recycler located in Wabash, Indiana, had an explosion at one of its two manufacturing plants, which caused massive damage and one fatality. G&S Metals immediately put the insurer on notice. While the insurer acknowledged coverage for the loss, the insurance payments were not timely delivered during the next two years and the plant was not restored to its pre-explosion condition by the insurer until several months after its policyholder filed for Chapter 11 bankruptcy and its assets were liquidated.

G&S hired Chris Braun and his team at PSRB, which has the largest policyholder coverage practice in Indiana, to pursue the insurance company for the extensive damages it had suffered. A lawsuit was filed against the insurer for lost business income and consequential damages totaling the loss of the entire company. The lost profits claim was made even more challenging because the explosion occurred at a new plant that had only been operating for about a year. Over the course of several years the case involved production of hundreds of thousands of pages of business records detailing the company's historical business operations and profitability, numerous depositions of both fact and expert witnesses from across the country, and extensive motion practice, including defending against an aggressive counterclaim the insurer filed against its policyholder. After defeating the insurance company's various motions to get the case dismissed, the case was set for a jury trial in May 2017 and, subsequently settled in mediation.

Businesses buy insurance to protect them against the unexpected and to provide the funding necessary to cover losses so the business can get back on its feet after an accident. When the insurance payments are wrongfully denied or when they are slow in coming it can have devastating consequences on the business. PSRB has litigated many of the cases that make Indiana one of the most favorable jurisdictions in the country for policyholders seeking insurance coverage for their losses. For more information about this case, or to consult with one of the attorneys on this team, contact Chris Braun, Thao Nguyen, or Jeff Claflin.