

David Very Wins Award of Attorney Fees to Insurer before Law Court

In a decision issued today in [Fortney & Weygandt, Inc. v. Lewiston DMEP, et al., 2022 ME 5](#), the Maine Law Court upheld the award of over \$300,000 in attorney fees to Travelers Insurance Company for successfully defending counter-claims against its insured in an action initiated by its insured under Maine's prompt payment statute.

David Very was retained by Travelers to defend a contractor from several counter-claims alleging defective work in response to the contractor filing an action seeking payment from the owner pursuant to Maine's prompt payment statute. The statute provides that the prevailing party in any proceeding to recover payment within the scope of the Prompt Payment Act must be awarded attorney fees.

After several years of litigation, the contractor won the prompt payment action and all of the counter-claims were defeated at trial before Maine's Business Court. Attorney Very filed an application for all of its fees arguing that the defense of the counterclaims was "intertwined" with the prompt pay action, and thus awardable. Attorney Very further argued that the fact that an insurer, rather than the contractor, paid the fees should not exclude the award because to do so would give the owner a windfall and defeat the purpose of the prompt payment statute, which is to deter owners from failing to timely pay contractors. The Business Court agreed and awarded over \$300,000 in fees to the Travelers and the owner appealed.

On appeal, the Law Court agreed that the contractual payment claims and counterclaims were based on a common core of facts so interwoven that separation of fee and non-fee work was not possible. Thus, the Law Court disagreed with the owners' argument that fees paid by Travelers should not have been awarded because counsel was specifically retained to defend the counterclaims, not prosecute the payment claims, as those claims were intertwined. The Court also rejected the owners' argument that Travelers, as an insurer, would not be entitled to fees under the statute, as excluding those fees would violate the purpose of the prompt payment statute. Thus, the Law Court upheld the award of over \$300,000 to the Travelers, plus fees associated with the appeal.

Please click [here](#) for the Law Court's full decision in [Fortney & Weygandt, Inc. v. Lewiston DMEP, et al., 2022 ME 5](#).

For more information about this case, or for questions on construction related matters, please contact David P. Very at dvery@nhdlaw.com.