

JAMIE JACKSON

v.

NORTH EAST INSURANCE COMPANY

Argued April 12, 2012  
Decided October 4, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,  
GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

Jamie Jackson appeals and North East Insurance Company cross-appeals from the entry of judgment in the Superior Court (Cumberland County, *Cole, J.*) granting (1) partial summary judgment in favor of Jackson, finding that North East breached its insurer's duty to defend, (2) partial summary judgment in favor of North East, declaring that North East was only liable to Jackson for attorney fees and costs, and (3) Jackson's request for attorney fees and costs.

Contrary to Jackson's assertion, the court did not err by calculating damages based on the actual economic harm caused by the insurer's breach. *See Gibson v. Farm Family Mut. Ins. Co.*, 673 A.2d 1350, 1354-55 (Me. 1996); *Thurston v. Cont'l Cas. Co.*, 567 A.2d 922, 925 (Me. 1989). Nor did the court err in concluding that there was no genuine issue of material fact regarding the amount of damages, and that summary judgment on that issue was therefore proper. *See* M.R. Civ. P. 56; *Blue Star Corp. v. CKF Props., LLC*, 2009 ME 101, ¶ 38, 980 A.2d 1270 (concluding that summary judgment was proper where there were no factual issues regarding lost profits damages).

Contrary to North East's contention, the court did not err by applying the comparison test and concluding that North East had a duty to defend Jackson. *See*

*Mitchell v. Allstate Ins. Co.*, 2011 ME 133, ¶ 10, 36 A.3d 876 (stating that “[t]he facts alleged in the complaint need not make out a claim that specifically and unequivocally falls within the coverage”); *Travelers Indem. Co. v. Dingwell*, 414 A.2d 220, 224 (Me. 1980) (stating that the duty to defend determination “is based exclusively on the facts as *alleged* rather than on the facts as they actually are” (quotation marks omitted)); *see also J.A.J., Inc. v. Aetna Cas. & Sur. Co.*, 529 A.2d 806, 808 (Me. 1987) (stating that “[a]ny doubt about the adequacy of the pleadings to bring the occurrence within the coverage of the insurance policy should be resolved in favor of the insured”). Nor did the court commit an error of law by awarding attorney fees, or abuse its discretion in determining the amount. *See Gibson*, 673 A.2d at 1354.

The entry is:

Judgment affirmed.

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**On the briefs:**

Lance E. Walker, Esq., Norman, Hanson & DeTroy, LLC, Portland, for appellant Jamie Jackson

Kevin G. Libby, Esq., and Erica M. Johanson, Esq., Monaghan Leahy, LLP, Portland, for appellee North East Insurance Company

**At oral argument:**

Lance E. Walker, Esq., for appellant Jamie Jackson

Kevin G. Libby, Esq., for appellee North East Insurance Company