

HOWARD SPORTS, INC., et al.

v.

ACADIA INSURANCE COMPANY

Submitted on Briefs September 27, 2007
Decided November 13, 2007

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

MEMORANDUM OF DECISION

Howard Sports, Inc., Howard Sports-Topsham, Inc., Andrew J. Howard, and Clayton N. Howard (collectively, Howard Sports) appeal from a judgment entered in the Superior Court (Lincoln County, *Cole, J.*) upon a jury verdict finding that Acadia Insurance Company was entitled to \$40,000 on its counterclaim. Contrary to Howard Sports's contentions, Acadia did not waive the right to bring its counterclaim by paying \$40,000 on the insurance claim, *see Roberts v. Frank L. McKinney, Inc.*, 485 A.2d 647, 651 (Me. 1984); the counterclaim was not precluded by administrative res judicata or collateral estoppel, *see Macomber v.*

MacQuinn-Tweedie, 2003 ME 121, ¶ 22, 834 A.2d 131, 138-39; the court did not err in denying Howard Sports's motion to alter or amend the judgment, in which Howard Sports asserted that the jury's \$40,000 verdict on Acadia's counterclaim was excessive, *see* M.R. Civ. P. 59; *Walter v. Wal-Mart Stores, Inc.*, 2000 ME 63, ¶¶ 35-36, 748 A.2d 961, 973; the court properly denied Howard Sports's "motion for judgment NOV," *see* M.R. Civ. P. 50(b), because Howard Sports failed to preserve this motion by failing to move for a judgment as a matter of law at the close of the evidence pursuant to M.R. Civ. P. 50(a), *see Nordic Sugar Corp. v. Me. Guar. Auth.*, 447 A.2d 1239, 1241 (Me. 1982); *Patterson v. Rossignol*, 245 A.2d 852, 854 (Me. 1968); and the evidence did not compel a finding for Howard Sports on its unfair claims settlement practices claim, *see* 24-A M.R.S. § 2436-A (2006); *Rand v. Bath Iron Works Corp.*, 2003 ME 122, ¶ 10, 832 A.2d 771, 773.

Contrary to Acadia's contention in its cross-appeal, the court did not abuse its discretion in denying Acadia's request for attorney fees pursuant to M.R. Civ. P. 37(c), *see Bartner v. Carter*, 405 A.2d 194, 205 (Me. 1979), and the insurance fraud prevention statute, 24-A M.R.S. § 2186(7) (2006), *cf. Pine Ridge Realty, Inc. v. Mass. Bay Ins. Co.*, 2000 ME 100, ¶ 29, 752 A.2d 595, 602.

The entry is:

Judgments affirmed.

Attorney for the appellant:

Edward Dardis, Esq.
Howard & Bowie
P.O. Box 460
Damariscotta, Maine 04543

Attorney for the appellee:

William T. Kennedy, Esq.
21 McGrath Highway
Quincy, MA 02169