

## Tidyman's Management Services v. Davis et al.

Year: 2013

Court: Montana Supreme Court

Case Number: DA 12-0228

Under Montana law, if a carrier refuses to defend under a reservation of rights, it does so at its own peril and is liable for all damages resulting from an unjustified breach of the duty to defend. UP argued in its brief that when a policyholder enters into a good faith stipulated judgment as a result of a carrier's unjustifiable breach of its duty to defend, the stipulated judgment is conclusively enforceable against the carrier. In other words, the carrier may not later challenge the judgment on Due Process grounds or avail itself of additional procedural safeguards (e.g. discovery and an evidentiary hearing as the carrier here requested). UP reminded the Court that the duty to defend is broader than the duty to indemnify, and as such, the carrier has two options: (1) Prove the stipulated judgment was not made in good faith or (2) move to set aside the stipulated judgment. Allowing the carrier to re-litigate issues from the underlying action defeats the fundamental purpose of insurance. UPdate 8/5/14: In a mixed result, the Montana Supreme Court held that that the carrier had in fact breached its duty to defend and was thus estopped from denying coverage while at the same time adopting the carrier's argument that a "reasonableness" hearing was required, under the facts of that particular case, to determine whether the stipulated judgment was excessive but not whether the stipulated judgment was collusive.

UP's brief was drafted pro bono by Timothy P. Law of Reed Smith, LLP.