

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

BAYOU INSPECTION SERVICES, INC.

CIVIL ACTION

VERSUS

NO. 11-2643

ORION CONSTRUCTION LP

SECTION "N" (3)

**ORDER AND REASONS**

Before the Court is **Defendant in Counterclaim, First Mercury Insurance Company's Motion for Partial Summary Judgment (Rec. Doc. 27)**, seeking to dismiss claims for bad faith penalties and attorney fees brought against First Mercury by counterclaimant Orion Construction LP ("Orion").

Having considered First Mercury's motion and the memorandum and materials submitted in support thereof (Rec. Doc. 27 and attachments), Orion's opposition memorandum and materials submitted therewith (Rec. Doc. 32 and attachments), First Mercury's reply memorandum (Rec. Doc. 37), Orion's sur-reply memorandum (Rec. Doc. 41), First Mercury's response to the sur-reply (Rec. Doc. 48), and the applicable law, the Court finds that Orion has shown that a genuine dispute exists as to whether First Mercury has received satisfactory proof of all or part of the claimed loss and if so, when such receipt occurred; whether the loss is covered under the Professional Liability part of the Policy; whether First Mercury has a reasonable basis for its continued failure to pay all or part of the loss pursuant to the Professional Liability part of the Policy; and whether First Mercury has misrepresented its Policy provisions, particularly those which it claims exclude coverage under the Professional Liability part of the

Policy.

Accordingly,

**IT IS ORDERED** that First Mercury's motion for partial summary judgment (Rec. Doc. 27) is hereby **DENIED**.

New Orleans, Louisiana, this 3<sup>rd</sup> day of January, 2013.



**KURT D. ENGELHARDT**  
**UNITED STATES DISTRICT JUDGE**