Martin, Disiere, Jefferson & Wisdom

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TEXAS INSURANCE LAW NEWSBRIEF

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COURT FINDS PLAINTIFF'S "BAD FAITH" DISCOVERY TACTICS WARRANT SANCTIONS

Recently, Judge Micaela Alvarez of the United States District Court, Southern District of Texas McAllen Division, reviewed State Farm Lloyds' motion to quash abusive discovery propounded by Plaintiff's counsel and then; struck Plaintiff's 188 requests for admission, quashed the deposition notice for State Farm's corporate representative and notified Plaintiff's counsel that once State Farm's counsel submits a motion for recovery of expenses in making the motion, the court will award State Farm's expenses.

In *Montoya v. State Farm Lloyds*, No. 7:14-CV-00182 (S.D.Tex. January 27, 2015), the insured sued State Farm Lloyds alleging breach of contract and asserting common law and statutory bad faith claims arising from wind and hail damage. After the initial status conference, Plaintiff's counsel served 188 requests for admission and noticed the deposition of a State Farm corporate representative on eleven categories of testimony and demanded production of twenty-three categories of documents. After a thorough review of the facts and applicable rules, the Court found that ..."Plaintiff's bad faith discovery tactics and misrepresentations to the Court warrant that counsel be sanctioned." The Court limited discovery to the breach of contract of action, struck Plaintiff's 188 requests for admission in their entirety and quashed the corporate representative's deposition.

Editor's Note: We congratulate State Farm Lloyds and their counsel, Brian Chandler and Ron Schramm with Ramey, Chandler, Quinn & Zito firm in securing this just and significant result.

BREACH OF CONTRACT AND EXTRA-CONTRACTUAL CLAIMS BASED ON ALLEGED "FULLY COVERED" STATEMENT FALL SHORT - SUMMARY JUDGMENT AFFIRMED

Last Tuesday, the Houston Court of Appeals affirmed summary judgment in favor of an insurer after finding that the agent's alleged statements that the insured was "fully covered" were not actionable when the insurer paid the applicable policy limits for a theft loss, even though the insured sought recovery for substantially larger losses. In *Zatorski v. USAA Texas Lloyd's Company*, 2015 WL 456474 (Tex.App.- Houston [1st Dist.] February 3, 2015), the insured purchased a renter's policy seeking "full coverage" but did not review it upon receipt. Armed intruders reportedly broke into the insured's rental home and stole firearms and a safe containing watches, jewelry and cash valued at over $260,000. The insured submitted a claim to USAA which promptly responded paying policy limits of $1,000 for jewelry, $2,000 for firearms, $200 for cash and $1,300 for the safe, or $4,500 total. The insured sued and the trial court granted summary judgment in favor of USAA on all claims.

On appeal, the court examined the nature of the alleged representations by USAA's agent and the disclosures made by the insured as to the value of the items for which he sought coverage. And while the insured testified that the insurance agent reportedly told him he was "covered fully", the evidence did not show that the insured told the agent that "the value of any of the items for which he sought to buy coverage." Noting that "[g]eneral claims by the insurer of the adequacy or sufficiency of coverage ... are not generally not actionable..." and that USAA paid the full amount or applicable policy limits for the items lost, the court found no breach of contract. And because there was no breach of contract, the common law and statutory bad faith claims failed as well. Summary judgment in favor of USAA was affirmed.

Editor's Note: We congratulate USAA and defense counsel Christopher Martin (lead trial counsel) and Levon Hovnatanian, (lead appellate counsel) with Martin, Disiere, Jefferson & Wisdom in securing this significant victory.

TEXAS PROMPT PAYMENT ACT NOT APPLICABLE TO BUSINESS INTERRUPTION CLAIM FIRST MADE AFTER SUIT FILED

The U.S. District Court for the Southern District of Texas, Judge Lee H. Rosenthal recently granted summary judgment in favor of Lexington Insurance Company after finding that the insurer promptly paid the insured's covered loss once the insured provided the requested invoices. And, the business interruption claim failed because the insured lacked the expert testimony necessary to support

the claim. Lastly, Texas Insurance Code Sec. 542 - Prompt Payment of Claims Act - was not violated because the business interruption claim was not made until after suit was brought.

In *Metro Hospitality Partners, LTD v. Lexington Insurance Company*, 2015 WL 409803 (S.D.Tex. January 29, 2015), the Crown Plaza Hotel's air conditioner chiller broke down in August 2010. Two weeks after reporting the claim, the insured sent a repair estimate and the insurer responded accepting the claim and requested repair bids, contracts or invoices for payment. The insured did not respond for nine months and then demanded $600,000, asserting property loss, internal labor costs and "intangible" "reputation" damages plus $15,000 in attorney fees from the insurer. The only detailed information provided were $115,000 in invoices for the chiller replacement. The insurer applied the $25,000 deductible and promptly paid $90,000. This lawsuit followed.

In a well reasoned opinion, Judge Rosenthal found that all properly documented damages had been paid and no competent evidence supported the amount of business interruption damages claimed. Accordingly, summary judgment was granted on the breach of contract and extra-contractual claims. Then focusing on the Texas Prompt Payment claims related to business interruption, the Court observed that the business interruption claim was first made after suit was filed and no documents in support were provided until after "significant prodding from the court and the defendant...." The court found that the Texas Prompt Payment claims based on the business interruption claim and the facts presented, failed as a matter of law. Summary judgment was granted in Lexington's favor on all claims.