Martin, Disiere, Jefferson & Wisdom

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TEXAS INSURANCE LAW NEWSBRIEF

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DALLAS FEDERAL COURT DISMISSES BAD FAITH/DTPA SUIT, HOLDING A VALUE DISPUTE IS NOT A MISREPRESENTATION

Last week, a federal district judge in Dallas granted a carrier's 12(b)(6) motion to dismiss the policyholder's bad faith and DTPA claims, and disposed of the entire case. *Click v. State Farm Lloyds*, No. 1:17-CV-00108-BL, 2018 WL 1322167 (N.D. Tex. March 13, 2018) (slip op.) involved a homeowner's water damage claim for which State Farm paid approximately $25,000 in covered repair costs. The homeowner contended much of the damaged property could not be repaired and needed to be replaced, and alleged the actual cost of covered repair/replacement was nearly $83,000.

State Farm removed the resulting lawsuit to federal court and moved to dismiss most of the claims for failure to meet federal pleading standards. The court observed that while the petition recounted the events leading to the dispute, and also contained separate sections alleging a series of statutory violations, the petition did not do enough to explain how the alleged facts gave rise to the alleged violations. The court stated, “Under the federal pleading standard, throwing out a narrative account of the facts and then separately citing to statutes but putting the onus on the court or defendant to determine which facts might support which legal claims is deficient pleading.”

The court also rejected the homeowner's contention that State Farm misrepresented the policy terms by failing to pay all of his loss as promised: “...the insured cannot decide that the multiple estimates prepared by an adjustor are insufficient, provide his own estimate, and then claim that the insurer violates the DTPA by declining to pay out the total of his estimate, whether or not the insurer advertised the policy as compensating for all loss.” The court went on to observe that nothing in the law requires an insurer to “pay out any amount the insured feels entitled to,” and that a dispute on the value of a claim, without more, is not a misrepresentation or a DTPA violation.

Ultimately the court dismissed all of the claims with prejudice except the insured's claim for declaratory judgment, which it dismissed without prejudice.

Editor’s Note: This ruling once again demonstrates the value of pre-answer motions to dismiss in federal court, and shows that Judge McBryde is not the only judge in the Northern District who will grant them.

FIFTH CIRCUIT AFFIRMS COVERAGE OPINION EXAMINING BODILY INJURY, SEPARATION OF INSUREDS

Last week, the Fifth Circuit affirmed without opinion a 2016 federal district court ruling out of Dallas granting summary judgment that injury claims were covered under a liability policy. *Klein v. Federal Ins. Co.*, --- Fed.Appx. ----, 2018 WL 1284459 (5th Cir. Mar. 12, 2018) involved a class action brought by patients who had been administered an IV Vitamin E solution (“E-Ferol”) while they were premature infants. The defendants in the class-action suit were Revco (Federal's named insured) and Carter-Glogau (a subsidiary of Revco who was an insured by definition, but not a named insured). Federal refused to contribute its $15 million limit to help fund a $110 million settlement of the class action suit, and as a result, Revco and Carter-Glogau assigned their claims to the class action plaintiffs, who then brought this coverage suit against Federal.

In 2016, the district court granted summary judgment in favor of the plaintiffs, determining there was some evidence that all E-Ferol recipients, even those who were asymptomatic, were injured at the cellular level at the time the E-Ferol was administered, and thus the claims of the asymptomatic patients were “bodily injury” even though they had no physical manifestation of disease. The court relied heavily on asbestos cases to conclude that subclinical tissue damage is a “bodily injury” even though it occurs at the cellular level and has not yet resulted in any observable manifestation of disease.

The court also concluded (a) the policy's Separation of Insureds clause meant that the allegedly intentional conduct of Carter-Glogau could not be imputed to Revco, who was alleged to be merely negligent, and (b) the sale of Carter-Glogau's assets did not hinder Revco's ability to seek coverage under the policy because Carter-Glogau was not the owner of the policy and could not alienate Revco's rights in the policy when it transferred its own assets and rights to a third party.

The Fifth Circuit, apparently finding all of the district court's reasoning in 2016 to be sound, affirmed the ruling without additional comment, lauding the district court's "thorough" opinion.