The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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SUMMARY JUDGMENT IN FAVOR OF INSURER GRANTED ON BAD FAITH CAUSES OF ACTION

Last Monday, in *C.K. Lee v. Catlin Specialty Insurance Company,* 2011 WL 703624 (S.D.Tex February 28, 2011), the United States District Court for the Southern District granted an insurer's motion for summary judgment regarding its insured's causes of action for common law and statutory bad faith, unfair settlement practices under the Texas Insurance Code, prompt payment of claims pursuant to §542.055 of the Texas Insurance Code, DTPA violations, and fraud. The insured filed an insurance claim with Catlin Specialty Insurance Company, claiming damages to commercial property allegedly caused by Hurricane Ike. Catlin retained an independent adjuster to inspect the property. And the independent adjuster retained a roof consultant/engineering firm to assist with the inspections. The independent adjuster inspected the property once, and the roof consultant inspected the property twice and they determined that the damage to the roof of the property was not caused by winds from Hurricane Ike.

With respect to the insured's bad faith causes of action, the Court agreed with Catlin that there was a bona fide dispute as to whether the damages to the property were covered by the insurance policy. The Court explained that "[t]he roof was inspected once by an independent adjuster and twice by a roof consultant, and [neither] concluded that the damages were covered by the policy. Catlin was not privy to any information that concluded otherwise."

The insured argued that there was a fact issue as to the objectivity of the inspection reports and Catlin's reliance on them. The Court disagreed and explained that there were no competing reports and the insured's estimate did not contain any statements or conclusions relating to the cause of the damages. The insured also argued that there was a fact issue as to Catlin's reasonableness in relying on the inspection reports due to the fact that Catlin and the independent adjuster had entered into an agreement that the adjuster would adjust all Catlin's Hurricane Ike claims and because there were no written procedures regarding the investigation of claims or how to handle situations where there are competing reports. But the Court disagreed with the insured and concluded that these facts could not lead a reasonable juror to conclude that Catlin's reliance on the reports was unreasonable.

In addition, the Court found that there was no evidence of any misrepresentations by Catlin to the insured, nor any evidence that Catlin failed to deny coverage within a reasonable period of time or failed to provide the insured with a reasonable explanation of its basis for denying the claim.

Note: Dale Jefferson, Robert Dees, Barrie Beer, and Chris Harshbarger of Martin, Disiere, Jefferson & Wisdom who represent Catlin Specialty Insurance Company in this case, congratulate Catlin on this significant win.

SOUTHERN DISTRICT DENIES MOTION TO REMAND BASED ON IMPROPER JOINDER

Recently, in *Scott Browning v. Sentinel Insurance Company, et al*., 2011 WL 240338 (S.D.Tex. January 24, 2011), the United States District Court for the Southern District of Texas denied the plaintiff's motion to remand the case to state court. In this case, the plaintiff filed an insurance claim with Sentinel, his insurer, for property damage allegedly caused by Hurricane Ike. Sentinel retained Calvary Construction Co. to prepare an estimate of repair costs, a service consistently held by courts in Texas not to constitute engaging in the business of insurance for purposes of a claim under the Texas Insurance Code. The plaintiff filed this lawsuit against Sentinel and Calvary, alleging violations of the Texas Insurance Code.

Sentinel removed this case to federal court based on diversity jurisdiction. Diversity jurisdiction exists when all defendants and all plaintiffs are citizens of different states; if any defendant and any plaintiff are a citizen of the same state, there is no diversity of citizenship and, therefore, no diversity jurisdiction. Sentinel argued that there was diversity jurisdiction even though Calvary was a Texas citizen, because Calvary was improperly joined as a defendant because the plaintiff could not establish a cause of action against Calvary. And the test employed by Texas courts is whether the defendant has demonstrated that there is no possibility of recovery by the plaintiff against the non-diverse defendant. The Court agreed with Sentinel and denied the motion for remand, explaining that "[i]t is well-established that Texas law does not recognize a claim under the Texas Insurance Code against independent firms who are hired to provide engineering or similar services to the insurance company."

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