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TEXAS INSURANCE LAW NEWSBRIEF



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INTERPLEADER AND MEDIATION DO NOT WAIVE RIGHT TO COMPLETE APPRAISAL UNDER THE POLICY

In *In re Security National Insurance Company*, No. 14-10-00009-CV (Tex. App.—Houston [14th Dist.] April 22, 2010), the Court held that the trial court abused its discretion when denying Security National's Motion to Compel Appraisal. Security National issued a commercial insurance policy to Waloon Investment d/b/a Ramada Limited. The property suffered damage as a result of Hurricane Ike and Waloon filed a claim with Security National. Two days after filing a proof of loss, Waloon invoked the appraisal provision of the policy. Within weeks, Security National notified Waloon of the appraiser it selected; seven days later, Waloon notified Security National that it was no longer pursuing appraisal. Security National then requested the documents purportedly supporting Waloon's claim. Security National's request acknowledged that the appraisal issue was tabled but that it retained a right to deny the claim if there was a coverage dispute.

In March 2009, Belfor USA Group, the restoration contractor, filed suit against Waloon for non-payment of fees and failure to endorse insurance drafts issued for damages to the Ramada Inn. The suit alleged that Waloon entered an agreement to assign to Belfor its right to all insurance proceeds issued as a result of damage from Hurricane Ike. According to Security National, Waloon rejected the payments issued to Belfor and Waloon and asked Security National to issue the checks solely to Waloon.

That same month, Security National filed an interpleader and sought a declaratory judgment depositing a partial payment to Waloon into the registry of the court. Waloon filed a counterclaim for breach of contract and violations of the Texas Deceptive Trade Practices Act and Texas Insurance Code, bad faith, and fraud. Following an unsuccessful mediation, Security National re-asserted its right to an appraisal. Waloon rejected the appraisal request and, in September 2009, Security National filed a motion to compel appraisal, which the trial court denied two months later.

Waloon argued that Security National waived its right to appraisal, because it denied coverage under the insurance policy; however, Waloon could not identify any portion of coverage that was denied by Security National. In fact, the court noted that the record did not demonstrate a denial of liability, refusal to pay the loss, or any other action that would have lead Waloon to believe that compliance with the terms of the policy was not desired. Waloon also argued that Security National waived its right to appraisal by filing the interpleader, which was also rejected by the court, nor did the court believe that Security National waived its right to appraisal by filing a declaratory judgment action. Likewise, the court held that Security National did not waive its right to appraisal by attending mediation.

MCS-90 AND FORM F TEXAS ENDORSEMENT PROVIDE NO COVERAGE WHEN EMPLOYEE NOT TRANSPORTING CARGO FOR HIRE

In *Canal Indemnity Company v. Williams Logging and Tree Services, Inc.*, No. 4:09-cv-03333 (S.D. Tex. April 21, 2010), the court held that Canal Indemnity Company did not have a duty to indemnify Williams Logging and Tree Services in a suit brought as a result of an accident that occurred in a vehicle registered to Willie Williams when he was on his way to a dental appointment.

The vehicle driven on the date of the accident was registered to the company, and he drove the truck to work and he regularly carried gasoline and diesel in it to fuel other vehicles and equipment at the work sites. He insured it with another insurance carrier that paid policy limits after the accident. Canal issued a surplus liability policy to Logging with a \$1,000,000 policy limit. The Canal policy covered vehicles listed in the policy, and the truck driven by Willie Williams was not listed. The policy had two endorsements, a MSC-90 endorsement and a Form-F endorsement, and Williams argued that the endorsements covered the vehicle he drove to his dental appointment and required Canal to indemnify it for a judgment in the underlying suit.

The MCS-90 is a public liability endorsement required by the Motor Carrier Act of 1980 (the "MCA"). The court held that the vehicle was not covered by the MCS-90 endorsement, because it did not transport cargo for hire as contemplated in the MCA; further, the vehicle did not meet the requirements of a commercial motor vehicle as set forth in the statutes.

The Form F is the Texas counterpart to the MCS-90. Texas law requires motor vehicle carriers to have minimum bodily injury and property damage liability insurance. Texas law defines a commercial motor vehicle, and Williams truck failed to meet the definition.

Ultimately, the court held that the pickup was not transporting cargo for hire as contemplated by federal or state law, and Canal has no duty to defend Williams.

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