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INTERPRETING LAMAR HOMES: POLICYHOLDER NEED NOT SUBMIT LEGAL BILLS TO INSURER TO TRIGGER CHAPTER 542 DAMAGES

In a case of first impression decided earlier this month, the district court for the Northern District of Texas applied the Texas Supreme Court's holding in *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1, 20 (Tex. 2007), to determine whether a policyholder was entitled to damages under Chapter 542, also known as the Prompt Payment of Claims Act, beginning before the legal bills were submitted for payment. In *Trammell Crow Residential Co. v. Virginia Sur. Co., Inc.*, 2008 WL 5062132 (N.D. Tex. 2008), Trammell Crow sued its insurer seeking a declaration of Virginia Surety's duty to defend it in an underlying lawsuit involving claims alleging that Trammel Crow discriminated against persons with disabilities. After determining that Trammel Crow was owed a defense, the court turned to whether Trammel Crow was entitled to damages for Virginia Surety's alleged breach of Chapter 542 in refusing to provide a defense.

Despite the court's determination that a duty to defend was triggered, Virginia Surety argued that Trammel Crow was not entitled to damages under Chapter 542 because Trammel Crow never submitted any legal bills or invoices for expenses incurred in defending the underlying litigation. Virginia Surety argued that without these bills Trammel Crow had not submitted sufficient information to make a final proof of loss as required under Chapter 542. In rejecting this argument, the court looked to the original Texas Supreme Court opinion in *Lamar Homes* and interpreted it to instruct that the invoices are only required to value the loss because the actual loss has already occurred when the defense was wrongfully refused. The court concluded that Trammel Crow was entitled to damages and interest under Chapter 542, and will allow Trammel Crow to present evidence of its damages at trial.

RELATED-ENTITY EXCLUSION IN PROFESSIONAL LIABILITY INSURANCE POLICY FOUND TO BE AMBIGUOUS AND CONSTRUED TO APPLY TO FACTS EXISTING AT TIME PROFESSIONAL SERVICES PERFORMED

In a case of first impression decided last Wednesday, the district court for the Northern District of Texas interpreted the related-entity exclusion found in a professional liability insurance policy issued by Philadelphia Indemnity Insurance Company in *Philadelphia Indem. Ins. Co. v. Hallmark Claims Serv., Inc.*, No. 3:07-CV-01469-0 (N.D. Tex. 2008) (slip opinion). Philadelphia had sued Hallmark for a declaration that it had no duty to defend or indemnify Hallmark for claims arising from a lawsuit filed by Phoenix Indemnity Insurance Company, in which Phoenix alleged that Hallmark breached its duty as claims handler on a claim assigned to it by Phoenix. At the time the work was performed, Hallmark and Phoenix were not related entities with no overlapping officers or directors. But, before the claim was made, Phoenix became a wholly-owned subsidiary of Hallmark's parent company and the two began sharing numerous corporate officers and directors.

The related-entity exclusion limited the policy's coverage to exclude any claim "arising out of: … any 'Professional Services' performed for any entity in which any 'Insured' is a principal, partner, officer, director, or more than a three percent (3%) shareholder." Philadelphia argued that the exclusion's use of the present tense meant that the exclusion applied to the facts as presented when the claim is made. But, the court rejected this argument because of the exclusion's use of "arising out of" and "performed." The court also refused to consider the insured-versus-insured exclusion as an exemplar as offered by Philadelphia. Instead, the court found that there were no controlling decisions and that the phrase was ambiguous. The court then adopted Hallmark's construction that the exclusion applied to the facts as presented when the professional services were performed.