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WHAT ELEMENTS OF DAMAGES MAY BE CONSIDERED IN ESTABLISHING “AMOUNT IN CONTROVERSY” TO SATISFY FEDERAL JURISDICTION?

In *Veale v. Allstate Texas Lloyd's*, 2006 WL 3312229 (Nov. 13, 2006), one of the Federal District Courts of the Southern District of Texas examined which elements of damages may be considered in establishing the federal jurisdiction and the necessary amount in controversy as exceeding \$75,000. The Court determined that allegations of breach of contract and violations of Texas Insurance Code §541.060 (formerly Article 21.21) which were allegedly the “producing cause of damages to the Veales in an amount of no less than \$41,000” taken in conjunction with pleadings seeking “exemplary damages” or statutory “treble damages” were sufficient to satisfy the minimal \$75,000 amount in controversy jurisdictional issue.

The Court also noted that a defendant’s failure to attach a copy of the plaintiff’s live pleading to its notice of removal was not fatally defective to removal: “A defendant’s failure to file a copy of the plaintiff’s petition with its notice of removal is a procedural defect that may be cured by supplementing the required documents.”

BIFURCATION VERSUS SEVERANCE IN INSURANCE CONTRACTUAL AND EXTRA-CONTRACTUAL CLAIMS CASES

The Tyler Court of Appeals, in *In re: Allstate County Mutual Insurance Company*, 2006 WL 3313673 (Nov. 15, 2006), addressed the distinctions between bifurcation and severance of extra-contractual claims from a breach of insurance contract claim. Allstate sought severance and abatement of the extra-contractual bad faith claims against it. Accordingly, Allstate relied upon *Liberty National Fire Insurance Company v. Akin*, 927 S.W.2d 627 (Tex. 1996) for the proposition that where the insurer has made a settlement offer on a disputed contractual claim, it is unduly prejudiced to litigate both the contractual and the extra-contractual claims in the same lawsuit. The plaintiff argued the court should follow an unreported Texarkana Court of Appeals decision that allowed a bifurcated trial of the contractual and extra-contractual claims rather than severance of the claims into two causes of action. The trial court entered an order denying Allstate’s motion to sever and abate, but did agree to bifurcate the contractual and extra-contractual claims to be heard by the same jury in separate trials. Allstate then sought mandamus relief.

The Tyler Court of Appeals observed that the Texas Supreme Court has recognized that a severance of extra-contractual claims from contractual claims may be necessary in certain insurance cases. Such situation arises where the insurer has made a settlement offer on the disputed contract claim. Next, the Court noted the specific distinctions between severance and bifurcation. A severance divides the lawsuit into two or more separate and independent causes. When this has been done, a judgment that disposes of all parties and issues in one of the severed causes is final and appealable. An order for a separate trial (bifurcation) leaves the lawsuit intact but enables the court to hear and determine one or more issues without trying all controverted issues at the same time. The order entered at the conclusion of a separate trial is often interlocutory, because no final and appealable judgment can properly be rendered until all of the controlling issues have been tried and decided.

The same jury hears both parts of a separate or bifurcated trial. On the other hand, a suit severed into two separate and distinct causes will be heard by two different juries.

Without a severance of the contractual and extra-contractual claims, the dilemma presented where an insurer has made an offer to settle a disputed contract claim has been explained as follows: either a trial court refuses to admit evince of settlement offers, thereby acknowledging a defendant's right under Tex. R. Civ. P. 408 to exclude such evidence but denying a plaintiff the right to use it to establish essential elements of a bad faith claim; or the trial court admits evidence of settlement offers, satisfying a plaintiff's proof requirements but abrogating a defendant's right to exclude such evidence. "Only one decision can protect all interest involved, and that is to order severance of the two types of claims." Accordingly, the Tyler Court granted mandamus relief in favor of severance of the extra-contractual claims from the contractual claims.

Next, the Court examined whether abatement of the extra-contractual claims may be required. The Court noted its familiarity with the cases holding that abatement is mandatory when a trial court orders severance of the extra-contractual claims from the contractual claims. The Tyler Court was "also mindful that the trial court has a duty to schedule its cases in such a manner as to expeditiously dispose of them." Noting the Supreme Court has given wide discretion to trial courts in managing their dockets, the Tyler Court also held that it would not interfere with the exercise of that discretion absent a showing of clear abuse.

Finding that bifurcation eliminated the need to conduct discovery a second time in the event the insured prevailed on its contractual claims (thereby reducing the delay in adjudicating all of the insured's claims), the Tyler Court determined that bifurcation facilitated the trial court's duty to expeditiously dispose of the cases on its docket. Because bifurcation does not protect the interests of the parties in this situation, it is not an appropriate method of docket management under such facts.

According to the Tyler Court, allowing discovery on both the contractual and extra-contractual claims also avoids the expense of conducting discovery twice and the delay in adjudicating the extra-contractual claims. Thus, "this option also facilitates the trial court's duty to expeditiously dispose of its cases." Simply stated, Allstate failed to carry its appellate burden to show that the trial court abused its discretion in denying Allstate's motion to abate.

PLAINTIFFS' FIRM PUBLICIZES ALLEGATIONS OF ALLEGED ABUSE BY ALLSTATE FOR HUNDREDS OF SAN ANTONIO AREA POLICYHOLDERS

On November 9th, a plaintiffs' firm which traditionally represents policyholders in insurance cases, Gravely & Pearson, L.L.P., filed two lawsuits against Allstate Texas Lloyds alleging widespread claims abuse in Texas. According to them, over 400 policyholders in San Antonio have allegedly been affected by Allstate's alleged conduct. The plaintiffs' lawyers have also alleged that one former Allstate adjuster has been sentenced to prison for his role in the alleged fraud.

The plaintiffs in the new Allstate suits contend that over the course of several years Allstate's policyholders were allegedly underpaid for foundation and water damage to their homes. It has been alleged that a former Allstate claims handler improperly issued payments to a local construction and remediation firm. Plaintiffs further allege that a person with the remediation company purportedly "kicked back" funds to the claim rep. These two new lawsuits allege damage to the homes that Allstate purportedly failed to address.

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