

TEXAS INSURANCE LAW NEWSBRIEF

AUGUST 12, 2013

SOUTHERN DISTRICT OF TEXAS DISMISSES EXTRA-CONTRACTUAL CLAIMS BASED ON EXHAUSTION OF POLICY LIMITS

Federal Judge Lynn Hughes of the Southern District of Texas recently granted summary judgment in favor of an insurer in *Sebring Apartments v. Lexington Ins. Co.*, No. H-10-19 (S. D. Tex. July 31, 2013) (slip opinion). There, Lexington had exhausted its \$25 million policy limit in numerous claims involving Hurricane Ike damage to the insured's properties. The insured demanded 18% interest under Texas Insurance Code Chapter 542 and attorney fees on the ground that payment had been improperly delayed.

In his usual inimitable style, Judge Hughes dismissed the claims, on the ground that there could be no Chapter 542 interest owing when the policy limits had been exhausted. He stated, "What was not paid of what was owed was zero, and 18% of zero is zero." He went on to point out, "That Lexington exhausted the policy limits is evidence of its earnestness." Finally, he held there could be no extra-contractual claims when there was no breach of contract. Although he acknowledged existing law supporting the hypothetical possibility of an extra-contractual claim existing separately from a breach of contract claim, he concluded there was no support for any such claim when every dollar that could possibly have been owed under the policy had been paid.

VALIDITY OF ARBITRATION AWARD TESTED IN CARRIER-ON-CARRIER DISPUTE

In a case of judicial review of arbitration awards, the Dallas Court of Appeals invalidated an arbitration award last Wednesday in *American Modern Home Ins. Co. v. Allstate Ins. Co.*, No. 05-11-00997-CV (Tex. App.—Dallas, Aug. 7, 2013) (slip opinion).

American Home and Allstate insured neighboring tenants in an apartment complex. American Home's insured was alleged to have caused a fire that damaged Allstate's insured as well as numerous other units in the complex. After paying its insured \$18,000, Allstate asserted a subrogation claim against American Home. Both carriers were parties to an arbitration agreement requiring them to arbitrate property losses under \$100,000. Allstate obtained an arbitration award from the arbitrator. American Home challenged the award on the ground that the total damages it had identified to date exceeded \$600,000 and thus it was not required to arbitrate Allstate's claim because the total claim was over \$100,000.

Allstate filed an application in the district court to confirm the award was binding, on the ground that its claim for \$18,000 was plainly below the \$100,000 limit. A few days later, the arbitration association voided the award. After Allstate filed an amended application continuing to argue in favor of enforcing the award, the trial court confirmed the award and entered judgment in favor of Allstate.

The Court of Appeals reversed, holding the arbitration association's act of voiding the award completely deprived the district court of jurisdiction to confirm it or enforce it. Although the court did not openly address it, it appeared to believe the timing of the arbitration association's act was of no relevance, as long as the award was voided before it was actually confirmed by the court. This is consistent with law holding that subject-matter jurisdiction may not be waived and can be raised and determined by the court at any time.

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Invitations Will Be Mailed Out Soon