

TEXAS INSURANCE LAW NEWSBRIEF

SEPTEMBER 30, 2013

SETTLEMENT OFFERS ARE NOT CONSIDERED NOTICE OF PAYMENT OF A CLAIM IN ORDER TO TRIGGER THE FIVE DAY PAYMENT PROVISION UNDER CHAPTER 542 OF THE TEXAS INSURANCE CODE

In *Terry v. Safeco Ins. Co. of Am.*, CIV.A. H-10-0340, 2013 WL 5214315 (S.D. Tex. Sept. 17, 2013) Judge Lee Rosenthal (Federal District Court Judge from the Southern District of Texas) granted Safeco's Motion for Summary Judgment on Plaintiff's Chapter 542 (Prompt Payment) causes of actions. Judge Rosenthal determined that the five-day-payment provision under Chapter 542 of the Texas Insurance Code does not require payment of every settlement offer within 5 days. Nor does 542 require "rolling" payments out every five days even if the insured rejects a settlement offer and demands more, and the insurer increases its offer. In *Terry*, Plaintiffs and the insurer entered into negotiations to settle Plaintiffs' medical costs under uninsured motorist coverage. Safeco rejected Plaintiff's initial demand because it determined that the plaintiffs' were partially at fault for the auto accident. After several negotiation moves by both parties to settle all of the claims, the insurer sued Safeco alleging that Safeco failed to "timely acknowledge, investigate, accept, and pay the claim."

In her opinion, Judge Rosenthal explained that the Court does not consider Safeco's settlement offers as a partial acceptance of claim under the prompt-payment statute. Further, Safeco rejected the plaintiffs' demand before offering settlement, and Safeco's settlement offers "stated the reasons why Safeco was not approving payment of the full amount. The Court determined the fact that Safeco "approved" part of the claim for settlement purposes is not a notice of acceptance for the purpose of the prompt-payment statute.

PLAINTIFF'S MOTION TO REMAND DENIED IN VALLEY WIND/HAIL SUIT

In *Guerrero Investments, LLC v. Am. States Ins. Co.*, 7:12-CV-430, 2013 WL 5230718 (S.D. Tex. Sept. 17, 2013), the Federal District Court Judge for the McAllen Division of the Southern District of Texas denied Plaintiff's Motion to Remand and determined an insurer adjuster was improperly joined for purposes of defeating diversity jurisdiction.

American States Ins. Co, removed the case from the 398th Judicial District Court in Hidalgo County. Plaintiff's Original Petition alleged that it owned six properties which sustained covered losses in the form of windstorm, hailstorm, and water damages that occurred on an unspecified date. Plaintiff made only one factual reference to the adjuster in that it "committed the actions alleged against Plaintiff in the complaint." The Insurer removed the lawsuit on the basis of improper joinder and Plaintiff filed a Motion to Remand.

The Court determined that there must be a reasonably possibility for recovery, and not merely a theoretical one, against a non-diverse defendant in order to remand a case back to State Court. The Court agreed with the insurer that Plaintiff's Original Petition did not identify a reasonable basis for recovery against the adjuster. Because Plaintiff did not make specific allegations against the adjuster, its allegations lacked the required "factual fit" to justify remand.

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