Martin, Disiere, Jefferson & Wisdom

The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF

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HOUSTON COURT OF APPEALS AFFIRMS COMPLIANCE WITH CONTRACT FORECLOSES BAD FAITH CLAIMS

Last Tuesday, Houston's Fourteenth Court of Appeals quietly affirmed the general rule that a policyholder must establish a breach of contract as a threshold for a bad faith claim. In *Shafaii Children's Trust v. West American Ins. Co.*, --- S.W.3d ---, No 14-12-00447-CV, 2013 WL 5530824 (Tex. App.—Houston [14th Dist.] Oc.t 8, 2013) (slip opinion), the court affirmed a summary judgment in favor of the insurer on all claims. The policyholder had sued its insurers for business personal property (BPP) damage alleged to have been caused by Hurricane Ike. The insured submitted an inventory claiming $288,000 in BPP damage at a newly acquired location. The policy provided coverage for BPP at newly acquired locations, but coverage was limited to 10% of the declared BPP limit. The declared BPP limit was $66,000, so the insurer paid 10% of that limit, or $6,600.

The heart of the parties' dispute was an endorsement which increased the maximum BPP limit which could be declared, from $100,000 to $250,000. The endorsement stated, "If a limit is shown elsewhere in the policy for any of these coverages, then that limit applies in addition to the limits shown below." The insured claimed the phrase "in addition to" meant it was entitled to receive 10% of the declared value AND the entire $250,000, while the insurer argued that the endorsement did not alter the 10% limit, but merely changed the maximum cap from $100,000 to $250,000.

The district court and the court of appeals agreed with the insurer, observing that the insured's reading would have provided it with BPP coverage for a newly acquired property that was four times its existing declared BPP value. The court further noted that ambiguity must be evident from the face of the policy itself, and the mere fact of disagreement between the parties is not enough to create an ambiguity which must be construed in favor of coverage. Therefore, the court rejected the insured's affidavit claiming it had been told the $250,000 was on top of the existing 10%.

Perhaps most importantly, after finding the insurer's interpretation of the policy was the only reasonable one, and its payment of $6,600 had therefore ***not*** been a breach of contract, the court summarily disposed of the insured's bad faith claim, relying on *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338 (Tex. 1995) and *Toonen v. USAA*, 935 S.W.2d 937 (Tex. App.—San Antonio 1996, no writ). However, the court noted the insured had abandoned its Insurance Code and DTPA claims by failing to challenge the summary judgment on appeal, which somewhat limits the usefulness of this holding. The court then went on to address the insured's fraud claim separately, examining the evidence and affirming dismissal on no-evidence grounds.