

# TEXAS INSURANCE LAW NEWSBRIEF

APRIL 29, 2014

## TEXAS SUPREME COURT REJECTS EQUITABLE REIMBURSEMENT CLAIMS AGAINST INSURED IN WELL BLOW OUT COVERAGE CASE

The Supreme Court of Texas recently reemphasized its ruling in *Fortis Benefits v. Cantu*, 234 S.W.3d 647 (Tex. 2007), by rejecting claims by an insurer based on equity because the insurer had contractual remedies under the policy. In *Gotham Insurance Co. v. Warren E&P, Inc.*, 2014 WL 1190049 (Tex. March 21, 2014), the insurance policy provided coverage for costs incurred to regain control of an oil well in the event of a blow out. The insured represented that it owned a 100% interest in the well. A blow out occurred and Gotham paid under the policy but later learned that the insured had only a partial interest in the well and others shared in the loss. Gotham sued the insured seeking return of its payments under both breach of contract and equity theories.

Reemphasizing its holding in *Fortis Benefits*, the Court noted that "an insurer is limited to contractual claims when the policy addresses the matter at issue. Here the policy contains several clauses addressing misrepresentations, reporting, salvage and recoveries, subrogation and due diligence." The court discussed issues related to the contractual remedies and after finding some evidence in support of Gotham's contract claims, held that they could not rely on their equitable claims for recovery. Accordingly, the judgment of the court of appeals was reversed and the case was remanded to that court to address the contract claims.

**[Editor's Note:** Gotham recently filed a motion for reconsideration and is seeking possible amicus support from other carriers with an interest in energy insurance coverage. Any carrier seeking more information on this issue should contact Chris Martin of our office at [martin@mdjwlaw.com](mailto:martin@mdjwlaw.com) or at 713-416-1731.]

## SUMMARY JUDGMENT GRANTED IN FAVOR OF STATE FARM LLOYDS ON WIND, HAIL AND EXTRA-CONTRACTUAL CLAIMS

A U.S. District Court judge for the Dallas Division of the Northern District of Texas recently granted summary judgment in favor of State Farm Lloyds recognizing it had timely investigated the insured's wind and hail damage claim and promptly paid all that was owed on the claim. In *Bell v. State Farm Lloyds*, 2014 WL 1516254 (N.D.Tex., April 18, 2014), the insured presented a claim for damage to the insured property resulting from a June 22, 2013 hail storm. State Farm promptly acknowledged the claim and inspected the property finding some hail and wind damage. After receiving the insured's contractor's estimate, State Farm requested additional information. One month later, State Farm received a damage estimate from the insured's public adjuster that was surprisingly lower than State Farm's initial estimate as well as the insured's contractor's estimate. In October 2012, the insured requested a re-inspection and State Farm promptly obliged. The second adjuster wrote an estimate higher than the first adjuster's estimate, finding \$32,907.45 in damage and sent the estimate to the insured. State Farm subsequently received a "final invoice" for \$32,879 from the contractor who did the repairs and in December 2012, State Farm issued payment based on its slightly higher damage estimate, less the insured's deductible. The insured was apparently unhappy despite the payment of his claim and this lawsuit followed.

State Farm moved for summary judgment on all contractual and extra-contractual claims. Judge Barbara Lynn found there was no evidence that anything more was owed to the insured under the policy and granted summary judgment in favor of State Farm on the breach of contract claims. And, because there was no breach of contract, nor evidence of an act by State Farm that was so extreme it caused an independent injury, the court granted summary judgment in favor of State Farm on the common law and statutory bad faith claims. Lastly, the court found State Farm complied with its statutory time limits under Texas Prompt Payment of Claims Act and there was no evidence to support the insured's fraud claims. Accordingly, summary judgment was granted in favor of State Farm on all claims.

**[Editor's Note:** Chris Martin and Ryan Geddie of the firm's Dallas office had the privilege of representing State Farm in this lawsuit and congratulates it on this well-deserved result.]

## COURT FINDS STOWERS DUTY NOT TRIGGERED & UPHOLDS SUMMARY JUDGMENT IN FAVOR OF INSURER

Last Thursday, the Houston First Court of Appeals affirmed summary judgment in favor of an insurer on claims seeking recovery from the insurer in excess of the policy limits based on an alleged violation of Texas' *Stowers* doctrine finding the claimant failed to present settlement demands which triggered the insurer's duty to settle the liability claims against its insured.

In *Patterson v. Home State County Mutual Insurance Co.*, No. 01-12-00365-CV (Tex. App. – Houston [1<sup>st</sup> Dist.], April 24, 2014), the claimant's wife was killed when the insured eighteen-wheel truck collided with her vehicle. The claimant brought a wrongful death claim against the driver, the trucking company, and the leasing company. After receiving two demands for policy limits on behalf of the claimant and his children, the insurer filed an interpleader action to allow them to deposit the \$1,000,004 policy limits into the registry of the court and then sought to be dismissed from any liability. The trial court granted the interpleader and dismissed the insurer from all but the potential *Stowers* causes of action.

After the interpleader was granted, Home State withdrew its defense because its policy limits were exhausted by payment. After a bench trial, the claimants were awarded over \$5,000,000 in damages, took an assignment of claims from the insured and pursued Home State for the excess judgment based on *Stowers*. The trial court granted summary judgment in favor of Home State on the *Stowers* action and this appeal followed.

On appeal, the court reviewed the elements of a demand necessary to trigger an insurer's *Stowers* duty to settle under Texas law and held, at a minimum, that it requires: 1) a claim within the scope of coverage; 2) a demand within policy limits; and 3) the terms are such that an ordinary prudent insurer would accept it. The Court began by noting: "As a threshold matter, a settlement demand must propose to release the insured fully in exchange for a stated sum of money." Here, the three demand letters did not offer to release all parties or all of the claims and, furthermore, none of the demands were unconditional. Further, the named insured under the policy recognized the problems with the offers and did not want Home State to accept them. After reviewing these issues, and the arguments of the parties, the court affirmed summary judgment in favor of the insurer finding the demands failed to trigger the insurer's *Stowers* duty to settle.

## MDJW First Friday Webinar - Navigating Tilley, Budgets and Billing

Andrew Schulz - presenter

May 2, 2014

Our next First Friday will be held on May 2, 2014 at noon **Central** Time. Andrew Schulz, a partner in the Austin office, will present "**Navigating Tilley, Budgets and Billing.**" This course is meant to give the attendees an overview of the impact of obligations imposed by *Employers Casualty Co. v. Tilley* on the relationship between insured, insurer, and counsel. This relationship involves regular assessment and reporting to the insured and carrier. There will also be some insights into outside counsel's litigation budgeting and billing process.

Mr. Schulz is an attorney with extensive experience in civil litigation at the trial and appellate levels. His practice focuses on the evaluation and resolution of insurance matters involving coverage disputes, claims handling, and other legal issues of interest to insurers conducting business in Texas. Mr. Schulz has represented clients involved in complex coverage disputes, subrogation matters, personal injury claims, toxic torts, Maritime and Jones Act litigation as well as other civil litigation.

We have applied to the Texas Department of Insurance for one hour of Texas CE credit. Insurance professionals accredited by the Texas Department of Insurance should have their license number available during the training in order to request credit for the course.

**Note:** If you have never participated in one of the MDJW webinars, or, if you have had trouble in the past connecting to a webinar, please use the following link to check your computer's connectivity:

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