Martin, Disiere, Jefferson & Wisdom

The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF

JULY 22, 2014

THE "DUE CARE AND DILIGENCE" CLAUSE IN A WELL DRILLING INSURANCE POLICY IS A COVENANT THAT REQUIRES THE INSURER'S BURDEN OF PROOF AT TRIAL, AND A MERE DIFFERENCE IN EXPERT TESTIMONY DOES NOT CREATE A BAD FAITH CAUSE OF ACTION

This past week the Northern District of Texas, Wichita Falls Division granted in part Plaintiff Eagle Oil's partial motion for summary judgment and Defendant Travelers Property Casualty. Company of America's motion for summary judgment as to Plaintiff's extra-contractual claims. In *Eagle Oil & Gas Co. v. Travelers Prop. Cas. Co. of Am.*, 7:12-CV-00133-O, 2014 WL 3406686 (N.D. Tex. July 14, 2014)(J. O'Connor) a coverage dispute between the policyholder and insurer under a well drilling policy after the September 22, 2011 well blowout in Reeves County, Texas. The Policy provided protection against oil well blowouts, and reimbursement for expenses incurred in bringing the well under control.

The blowout occurred when Eagle Oil was attempting to open a stuck frac port sleeve by applying various levels of pressure. During the process, a 7-inch piece of casing ruptured in the well which caused the top casing joints of the wellhead to be ejected into the air, and allowed a flow of gas and well fluids to surface in an uncontrollable manner. While the well was undisputedly out of control as defined by the policy, the parties disputed whether the 7-inch casing broke because Eagle Oil exceeded the maximum allowable casing pressure for the drilling operation.

Travelers assigned an internal adjuster, independent energy loss adjusters, and a petroleum engineer to review information regarding the cause of the well control incident. Ultimately, the adjusters and engineer determined that the blowout was caused by Eagle Oil's use of excessive pressure on the 7-inch casing that caused the blowout to occur. Based on these findings, Travelers denied coverage to Eagle Oil on the grounds Eagle Oil's engineering decision to exceed maximum safe fracturing pressure violated the "due care and diligence" clause in the policy. Travelers denied coverage on the additional basis that the policy did not cover these claims because the well was lost due to the pressure operation and not from any unintended and uncontrolled flow that followed the breaking of the casing.

Eagle Oil filed suit alleging, among other things, that Travelers breached the policy by denying coverage. Both Eagle Oil and Travelers moved for summary judgment on different issues.

The court first considered Eagle Oil's partial motion for summary judgment, and the court agreed with Plaintiff that the "due care and diligence" clause in the policy was a covenant and not a condition precedent. As such, the court determined that Travelers had the burden of proof to establish that Eagle Oil did not comply with the due care and diligence clause at trial.

Next, Judge O'Connor considered Travelers' motion for summary judgment regarding Eagle Oil's extra-contractual causes of action. The court held that the fact that Plaintiff's experts disagreed with Travelers regarding whether Eagle Oil exercised due diligence and what were considered proper operating standards is insufficient to establish a bad faith claim. The Court further noted that conflicting expert opinions, by themselves, do not establish that the insurer acted unreasonably in relying on its own expert. The conflict may support an inference that one expert is incorrect in his or her conclusions, but this is not sufficient to support a bad faith claim.

Alternatively, the court found that even if the denial of coverage was found to be unreasonable, the Court granted summary judgment in Travelers' favor because Eagle Oil failed to raise a fact issue that Travelers' actions caused it injuries independent from the unpaid insurance policy proceeds.

IN DETERMINING CITIZENSHIP FOR PURPOSES OF DIVERSITY JURISDICTION STATUTE, FIFTH CIRCUIT LOOKS TO CITIZENSHIP OF INDIVIDUAL UNDERWRITERS OF LLOYD'S PLAN, NOT CITIZENSHIP OF ATTORNEY-IN-FACT WHO SELLS INSURANCE

In addressing a recent trend of suing a diverse insurer's attorney-in-fact who sells insurance in the state of Texas in order to defeat diversity jurisdiction, the Northern District of Texas reiterated the Fifth Circuit's longstanding precedent that a "Lloyd's plan" under Texas Law is an association of underwriters that sell insurance policies through an attorney-in-fact or other representative—for diversity purposes, only the citizenship of its underwriters are considered. The attorney-in-fact of a Lloyd's organization is not considered a member of the organization.

In *Bell v. State Farm Lloyds*, 3:13-CV-1165-M, 2014 WL 3058299 (N.D. Tex. July 7, 2014)(J. Lynn), Plaintiff sued State Farm Lloyds for the alleged violation of the duty of good faith and fair dealing, as well as provision of the Texas Insurance Code.

The court dismissed Plaintiff's causes of action against State Farm's adjusters, and granted State Farm's motion for summary judgment in its entirety and entered final judgment in favor of State Farm. Plaintiff challenged the court's jurisdiction after the judgment, and plaintiff requested that the court vacate the judgment and remand the case due to its lack of subject matter jurisdiction. Plaintiff alleged that State Farm Lloyds was a Texas resident because its attorney-in-fact, State Farm Lloyds, Inc., was incorporated in Texas. The court determined that the citizenship of State Farm's attorney-in-fact was irrelevant for purposes of determining diversity jurisdiction.

Judge Lynn further noted that it did not substitute or authorize the substitution of any parties, including State Farm Lloyds, Inc. State Farm Lloyds was the party plaintiff sued, and the party entitled to remove the case to federal court. The court had jurisdiction to hear the case. As such, the court denied Plaintiff's motion to vacate and remand.

[**Editor's Note**: State Farm was represented by Chris Martin and Ryan Geddie of our firm and we are grateful for the opportunity to defend State Farm in this case].