

TEXAS INSURANCE LAW NEWSBRIEF

DECEMBER 9, 2014

COURT FINDS UNSUPPORTED, CONCLUSORY ALLEGATIONS PROVIDE NO EVIDENCE OF STATUTORY OR COMMON LAW BAD FAITH & GRANTS PARTIAL SUMMARY JUDGMENT

Recently, a Federal District Court Judge in the Southern District of Texas, McAllen Division, considered an insurer's motion for partial summary judgment in a disputed hail damage lawsuit and found that the insured's unsupported allegations were insufficient to support their common law and statutory bad faith claims and granted partial summary judgment in favor of the insurer. In *Nino v. State Farm Lloyds*, 2014 WL 6674418 (S.D.Tex., November 24, 2014), the insured claimed property damage due to a March 29, 2012 hail storm. State Farm inspected the damage and estimated damages totaling \$2,311 which fell below the deductible. The insured's public adjuster, Bruce Wilson, estimated hail damage totaling \$31,991. A second inspection by State Farm included some interior damage that was not included in the first inspection and State Farm issued a subsequent payment for \$1,209 after applying the deductible. This lawsuit followed.

After suit was filed, the insured hired Peter De La Mora (a Texas engineer frequently hired by policyholder lawyers) who claimed to have found additional roof damage. State Farm hired Alan Berryhill, a construction and property damage expert from Austin, who found no roof damage and concluded State Farm's previous estimate was "reasonable with respect to the...2012 storms." In analyzing State Farm's motion for partial summary judgment, the court reviewed Texas law holding that an insurer "does not act in bad faith where a reasonable investigation merely shows a *bona fide* dispute about the insurer's liability on the contract." The court rejected the insured's efforts to use the adjusters' admissions that their photos "should have been better" and "were not of the best quality" as evidence to support an allegedly unreasonable investigation as well as general claim handling guidelines as evidence of an insufficient investigation. And despite serious allegations of "systematic denials" and other broad bad faith allegations, the court found the insured had offered no factual or legal basis in support of their bad faith claims.

In response to the insured's effort to offer her own testimony in order to create a fact issue, the court rejected the attempt and observed:

Indeed, adopting such amorphous position, whereby any plaintiff can impute bad faith to an insurer by opining about the unreasonableness of an adjuster's actions, can only be problematic and result in absurd results.

Accordingly, the court granted partial summary judgment in favor of State Farm and dismissed the insured's common law bad faith claims and statutory violation claims under the Texas Insurance Code and DTPA with prejudice.

(Editor's note: Plaintiffs were represented by Jason Speights of Speights & Worrich of San Antonio while State Farm was represented by Dan Andrews of Jones, Andrews & Ortiz in San Antonio. Congratulations to Mr. Andrews and State Farm on this great win.)

TRIAL COURT EXCEEDS JURISDICTION IN DETERMINING COVERAGE ISSUE IN TURNOVER ORDER & CORPUS CHRISTI COURT OF APPEALS CONDITIONALLY GRANTS MANDAMUS

In *In re Farmers Insurance Exchange*, 2014 WL 6804986 (Tex. App.- Corpus Christi, December 4, 2014), an underlying lawsuit alleged defamation, fraud, intentional infliction of emotional distress and interference with the possessory right of a child. Farmers disputed coverage but defended its insured, one of the two co-defendants in the underlying lawsuit, and filed a separate declaratory judgment action in the same court regarding the coverage questions. After a bench trial of the underlying lawsuit, the trial court rendered final judgment in the amount of \$10,736,000 and held both defendants were jointly and severally liable. And in the same underlying lawsuit, the trial court then granted plaintiff's application for post-judgment relief, and signed a turnover order finding: 1) the losses claimed were covered by the Farmers policy, 2) Farmers was presented with the opportunity to settle for an amount within their policy limits but failed to do so and, as a result, 3) Farmers was liable for the full amount of the judgment. Farmers filed a petition for writ of mandamus.

The Corpus Christi Court of Appeals examined Texas law applicable to turnover orders (a procedural device allowing judgment creditors (i.e. successful plaintiffs) to reach assets of a judgment debtor (i.e. insured defendants) which, in this case, was the insured's insurance claims against Farmers for indemnity under his liability policy). The court found the order went too far in adjudicating the merits of the coverage suit. In doing so, the court concluded order was manifestly improper and exceeded the trial court's jurisdiction. Mandamus was conditionally granted directing the trial court to vacate its order regarding coverage. But, the opinion also noted the trial court still retained jurisdiction to address the issues raised in the separate coverage lawsuit.