

# TEXAS INSURANCE LAW NEWSBRIEF

MAY 20, 2015

## FARMERS WINS SIGNIFICANT TORNADO TRIAL IN OKLAHOMA

Last Friday, a jury in Norman, Oklahoma rendered a verdict in favor of Farmers following a three-week trial arising out of the deadly tornado which hit Moore in May of 2013. Gabriel and Claudia Becerra sued Foremost Insurance Group and Farmers Insurance Exchange in Cleveland County, Oklahoma for breach of contract, bad faith, fraud and other tort claims arising out of damage to their home in Moore arising out of the F5 tornado which caused extensive damage in that community on May 20, 2013. The Becerra's home was located 2 blocks from the path of destruction where the tornado touched down. Four inspections by two different adjusters and an engineer over a six-week period resulted in four different claim payments for significant structural damage to the home. The insureds retained prominent Oklahoma bad faith lawyer Jeff Marr eight-weeks after the tornado and his bad faith suit was filed soon thereafter. The insureds claimed their home was a total loss and they were entitled to policy limits from Farmers. They sued for bad faith, fraud and other claims due to Farmers failure to pay policy limits following the tornado.

The case brought the post-suit conduct of attorney Jeff Marr into sharp focus because the trial evidence showed he promptly obtained two expert reports including an engineering evaluation of the structure which he didn't send to Farmers' adjusters until depositions in the case more than a year after suit was filed. When the City of Moore sent the homeowners notice of a condemnation action due to their failure to make any repairs, the trial evidence showed he alone attended the condemnation hearing and testified to City officials that the home could be destroyed. Neither the insureds nor attorney Marr appealed the condemnation order and, six months after the tornado struck, the City demolished the Becerra's home due to their refusal to make needed repairs. Neither the insureds nor attorney Marr informed Farmers of the demolition until a year later during depositions in the case. The policy automatically renewed a month after it was demolished by the City and, despite the demolition of the home, the insureds continued to make monthly premium payments for another 10 months. Attorney Marr made the demolition of the home and the renewal of the policy central components of his bad faith allegations.

The case was very unique for several reasons. First, the trial court permitted five different APEX depositions of senior executives of Farmers two weeks before the start of trial. The President of Farmers, the President of Foremost, the current and former Chief Claim Officers for Farmers, and the Chief Underwriting Officer were all deposed by attorney Marr on the eve of trial. Second, during the middle of the tornado trial, a F1 tornado hit Norman causing significant damage to two different neighborhoods. Heavy rains, local flooding and strong straight-line winds also caused court to dismiss early on three different trial days so jurors to take shelter with their families from the threat of more tornados and flooding. Third, attorney Marr orchestrated significant press coverage from the filing of his bad faith suit in 2013 through the final day of trial. Local TV and newspaper coverage was constant throughout the trial and included public disclosure of the amount of Farmers' last pretrial settlement offer and excerpts of the confidential and sealed deposition testimony of Farmers' President and CEO taken on the eve of trial. Finally, the trial was permeated with reflections on one of the most deadly tornados to ever hit the US. The jury was reminded of the 1,100 homes completely destroyed by the Moore tornado, the \$2 billion in local property damage, and the loss of 24 lives including 7 children who died at Plaza Towers Elementary School when their school collapsed due to tornadic winds.

Plaintiffs alleged Farmers breached the contract and committed bad faith in failing to properly investigate and failing to pay policy limits. Attorney Marr also turned the three-week trial into an "institutional bad faith" case by presenting extensive testimony and documents regarding multiple corporate claims practices including issues regarding the retention of allegedly biased engineers, adjuster training on brick veneer damage, adjuster bonuses, combined ratio accounting issues, underwriting practices, policy renewal issues, and a host of other corporate attacks. Plaintiffs sought policy limits, mental anguish damages, damages for loss of reputation, and punitive damages. On the first day of trial, Plaintiffs' counsel informed the jury they were seeking \$100 million in damages. For three weeks, they continued to treat the case as an enormous punitive damage case which the entire insurance world was watching and the opportunities the case presented to "send a message" to Farmers about its CAT Claims Operations.

Trial lasted for three weeks and the jury heard from 18 witnesses. Following 5 hours of deliberation last Friday, the jury returned a 9-3 verdict in favor of Farmers on every issue. Attorney Marr was curiously silent after the verdict and declined interviews to the press cameras and reporters waiting outside the courtroom following the verdict.

Several days before the start of trial, Chris Martin of our firm was retained by Farmers to try the case. Co-counsel for Farmers at trial was Michael Duncan of Chubbuck, Duncan and Robey of Oklahoma City.

Plaintiffs were represented by Jeff Marr of the Marr Law Firm in Oklahoma City and Stan Ward of Ward & Glass in Norman.

MDJW wishes to thank Farmers for the opportunity to help lead its defense at trial and for their courage in taking the case to trial in a potentially very hostile venue. We also offer our congratulations to the executives and claim witnesses who contributed to this great trial win and who worked very hard in recent weeks to ensure that the jury heard about the extraordinary lengths they went to ensure that accurate claims payments were made to these insureds and all of its insureds impacted by the Moore tornado two years ago. Today is the 2-year anniversary of that tragic weather event.

## HOUSTON FEDERAL JUDGE DENIES SUMMARY JUDGMENT IN ATV ACCIDENT CASE

Last Wednesday, Houston federal district judge Nancy Atlas denied summary judgment relief in a coverage case involving a serious ATV accident at Middleton Ranch in Fort Bend County. In *Mid-Continent Cas. Co. v. BFH Min., Ltd.*, No. CIV.A. H-14-0849, 2015 WL 2124767 (S.D. Tex. May 6, 2015), a potential client of BFH visited its cattle ranch property and was involved in an ATV rollover accident while on the ranch. BFH settled the injury claim for \$1 million, the limits of its insurance policy with Mid-Continent.

Mid-Continent filed a declaratory judgment suit arguing its policy did not cover the claim for two reasons:

1. The policy excluded coverage for use of the farm premises that are used for non-agricultural purposes; and
2. The accident was excluded because it was expected or intended from the insured's point of view.

Mid-Continent sought summary judgment on both of these coverage defenses, but Judge Atlas rejected them both, finding genuine issues of material fact. First, there was evidence that the property was represented to the insurance broker as a ranch, not a farm, at the time the property was purchased. Second, although there was some evidence the property was used to grow hay for cattle feed as well as raising cattle, it was not clear whether the property qualified as "farm premises" under the policy's definition.

As to the Expected or Intended Injury exclusion, Mid-Continent argued that BFH knew the employee driving the ATV did not have a driver's license, knew the ATV had experienced previous rollovers, and knew the ATV's safety net had been removed, and that all this created a high probability that the injury would be the natural and expected result of putting the claimant and driver on the ATV. Notably, to prevail on such a defense, the facts would have to establish a state of mind beyond gross negligence, which is generally defined as a subjective awareness of an objectively unreasonable risk of harm. Judge Atlas noted Texas law clearly holds the Expected or Intended Injury exclusion is not so broad as to exclude grossly negligent acts.