

TEXAS INSURANCE LAW NEWSBRIEF

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SUPREME COURT OF TEXAS REVERSES AND REMANDS BREACH OF INSURANCE CONTRACT AND VIOLATION OF THE INSURANCE CODE BASED ON FATALLY CONFLICTING JUROR ANSWERS.

The Supreme Court of Texas recently issued its opinion in *USAA Tex. Lloyds, Co. v. Gail Menchaca*, No. 14-0721, 2018 WL 1770287 (Tex. Apr. 13, 2018). The underlying case arose out of Menchaca's property damage claim following Hurricane Ike in 2008. Following the hurricane, Menchaca filed a claim with USAA whose adjuster found minimal damage. USAA denied payment to Menchaca based on the damage amounting to less than her deductible amount. Five months later, at Menchaca's request, USAA re-inspected the property with another adjuster who generally confirmed the first adjuster's findings. Again, USAA refused to pay any policy benefits. Menchaca then sued USAA for breach of the insurance policy and unfair settlement practices in violation of the Texas Insurance Code.

At the trial level the jurors answered 3 different Questions which ultimately led to confusion:

Question 1: Did USAA fail to comply with the terms of the insurance policy with respect to the claim for damages filed by Gail Menchaca resulting from Hurricane Ike: **No**.

Question 2: Did USAA engage in various unfair or deceptive practices, including failing to pay a claim without conducting a reasonable investigation with respect to that claim: **Yes**.

Question 3: Determine the amount of damages resulting from USAA's failure to comply with the policy or its statutory violations calculated as the difference between the amount USAA should have paid for the damages and the amount actually paid: **\$11,350**.

Question 1

At the trial level, the court disregarded Question 1 on the basis that it was "poorly worded" and "incomprehensible" and the Court of Appeals affirmed. Specifically, the Court of Appeals concluded it was impossible to know why the jury answered "no" and that such an answer did not establish a lack of coverage since USAA agreed that the policy provided coverage for Menchaca's loss (but that the loss amount did not exceed the deductible). The Court of Appeals further determined that the jury's answer to Question 2 rendered the answer to Question 1 immaterial. USAA argued that the jury's answer to Question 1 established Menchaca could not recover any policy benefits based on the statutory violation because Menchaca lost on the breach of contract claim. Comparatively, Menchaca argued that based on the jurors' answers to Questions 2 and 3, she could still recover the benefits since USAA violated the statute and caused her lost benefits.

The Supreme Court concluded the lower courts erred by disregarding Question 1. Specifically the Court stated that just because a court cannot determine a jury's answer to question does not mean the court can simply disregard it. A court can only disregard a question if the question is unsupported by evidence or immaterial. The Supreme Court determined that Question 1 was both supported by some evidence and material, therefore should not have been disregarded.

Questions 2 and 3

Addressing Questions 2 and 3, the trial court concluded that the answers together included all of the elements of Menchaca's Insurance Code claims: (1) that USAA violated the Insurance Code; (2) that the violation caused Menchaca to lose policy benefits she was otherwise entitled; and (3) the benefits she should have received amounts to \$11,350. The Supreme Court agreed, concluding that the answer to Question 3 specifically established that Menchaca was entitled to the policy benefits totaling \$11,350.

Conflict

Notwithstanding the findings as to Questions 2 and 3, the Supreme Court concluded that the answer to Question 3 addressed the same material facts as that of Question 1 making the two answers irreconcilable. Where Question 1 established the jury's conclusion that Menchaca failed to carry her burden of proof by showing USAA failed to comply with the policy, Question 3 indicated the amount of benefits the jury determined USAA owed Menchaca. Although the Court concluded that such a conflict did not constitute fundamental error and was not wholly preserved for appeal, "[i]n light of the parties' obvious and understandable confusion over our relevant precedent. . ." **the Court remanded the case in the interest of justice.**

Editor's Note: Martin, Disiere, Jefferson & Wisdom represented USAA in this matter at the trial court level. In coming to its conclusion, the Supreme Court reiterated and affirmed five key principals governing an insured's right to damages and pursuit thereof:

- 1) Generally, an insured cannot recover policy benefits as damages for an insurer's statutory violation if the policy does not provide the insured the right to receive the benefits under the policy.
- 2) An insured who establishes a right to receive benefits under a policy can recover those benefits as actual damages under the Insurance Code if the insurer's statutory violation causes loss of the benefits.
- 3) Even if the insured cannot establish a present contractual right to policy benefits, the insured can recover benefits as actual damages under the Insurance Code if the statutory violation caused the insured to lose that contractual right.
- 4) If the statutory violation causes an injury independent of the loss of the policy benefits, the insured may recover for the injury even if the policy does not grant the insured a right to the benefits.
- 5) An insured cannot recover any damages based on the insurer's statutory violation if the insured had no right to receive benefits under the policy and sustained no injury independent of the right to the benefits.

COURT APPLIES HEIGHTENED PLEADING STANDARDS - DISMISSES EXTRA-CONTRACTUAL CLAIMS AGAINST INSURER

Last Wednesday, the U.S. District Court for the Eastern District of Texas applied the heightened pleading standards under Federal Rules of Civil Procedure 9(b) and 12(b)(6) in dismissing claims alleging a breach of the duty of good faith and fair dealing and, violations of the Texas Insurance Code and DTPA arising from a disputed property damage claim under a homeowners policy. In *Guey Ming Yeh & Ling Ping Lin v. Safeco Insurance Company of Indiana*, No. 4:18-CV-00026, 2018 WL 1858151 (E.D. Tex. April 18, 2018), the insured property in Plano, Texas suffered damage from an April 3, 2014, storm. Safeco inspected the property and issued payments based on an initial estimate and a revised estimated finding \$25,277.94 in covered damage. The insureds later retained a public adjuster, Cal Spoon, who inspected the property on April 16, 2016, over two years after the loss, and prepared an estimate totaling \$45,989.15 plus overhead and profit. Spoon's estimate included disputed damage not addressed in Safeco's estimate.

On August 28, 2017, the insureds filed a state court lawsuit in Collin County, Texas and Safeco removed the matter to federal court. The lawsuit alleged that Safeco failed to adequately compensate the insureds for the storm damage to the insured property and asserted causes of action for breach of contract, breach of the duty of good faith and fair dealing, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act (DTPA). Then on March 12, 2018, Safeco filed its motion to dismiss under Federal Rules of Civil Procedure 9(b) and 12(b)(6). The facts were not disputed.

The court discussed Rule 12(b)(6) (requiring that the complaint assert facts, if accepted as true, state a plausible claim for relief) and Rule 9(b) (in part requiring that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). The court further noted that Rule 9(b) requires particularity in the pleadings, setting forth "the who, what, when, where, and how" the fraud occurred and "[a] plaintiff pleading fraud must 'specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.'" Lastly, the court noted that "[c]laims alleging violations of the Texas Insurance Code and the DTPA and those asserting fraud, fraudulent inducement, fraudulent concealment, and negligent representation are subject to" the heightened pleading requirements of Rule 9(b).

Safeco moved to dismiss the claims alleging a breach of the duty of good faith and fair dealing and, violations of the Texas Insurance Code and DTPA. First addressing the duty of good faith and fair dealing allegations, the court observed that the insureds have not pleaded any facts asserting an act so extreme that it would have caused an injury independent of their claims under the policy and, how they suffered damages other than a denial of policy benefits. There were no facts pleaded to support an untimely investigation and the court found that the complaint merely shows that Safeco paid the insureds and a bona fide dispute remains over the amount. Accordingly, the court granted Safeco's motion to dismiss the claims alleging a breach of the duty of good faith and fair dealing. And because the Texas Insurance Code and DTPA claims relied upon the same factual allegations, those claims were also dismissed. Only the breach of contract and prompt payment claims will proceed to trial.