Martin, Disiere, Jefferson & Wisdom

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TEXAS INSURANCE LAW NEWSBRIEF

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FEDERAL DISTRICT COURT IN DALLAS HOLDS INSURER HAS NO DUTY TO DEFEND DUE TO "DAMAGE TO YOUR WORK" EXCLUSION

In a significant decision for Texas insurers, a federal district court in Dallas recently granted summary judgment in favor of a general liability insurer based on the "damage to your work" exclusion, finding they had no duty to defend or indemnify a lawsuit against the insured. And, in doing so the court also dismissed all extra-contractual claims asserted. In *Siplast, Inc. v. Employers Mutual Casualty Co*., 2020 WL 5747869 (N.D.Tex., 2020), Siplast filed suit against Employers Mutual seeking declaratory relief requesting a defense in an underlying lawsuit. Siplast further alleged that by refusing to defend it, Employers Mutual breached the insurance contract and violated Chapter 542 and 541 of the Texas Insurance Code. Employers Mutual answered and asserted a counterclaim for declaratory relief seeking a declaration that it had no duty to defend Siplast in the underlying lawsuit. The parties filed cross-motions for summary judgment before significant discovery had been conducted.

In the underlying suit, the Plaintiffs asserted that a Siplast roof membrane and system had failed and Siplast failed to honor its Guarantee. In the Siplast Guarantee, Siplast guaranteed that the new roof membrane and system installed at the school would "remain in a watertight condition for a period of 20 years, commencing with the date hereof; or SIPLAST will repair the Roof Membrane/System at its own expense."

The court first analyzed whether the allegations against Siplast constituted an "occurrence" as defined in the policy. On this issue, the court found that the allegation against Siplast for breach of the Guarantee did not matter because the underlying complaint alleged property damage caused by an accident or occurrence. But the court noted that the inquiry does not end there and turned its attention directly to the "your work" policy exclusions. The court concluded there were no allegations from which the court could find that a claim was made to recover from Siplast for any damage to the building caused by the leaky roof that was separate from the damage to Siplast's product. The claims against Siplast were solely based on its failure to replace the roof as required by the Siplast Guarantee. And the "your work" exclusion precludes coverage for the cost of repairing Siplast's own work. Accordingly, there was no duty to defend. Further, based on this same finding, the court held that Employers Mutual was also entitled to judgment as a matter of law on all claims for breach of contract and violations of the Texas Insurance Code, and granted summary judgment in favor of the insurer on all claims.

Editor's note: This significant decision emphasizes the importance of raising dispositive coverage issues as early as possible. MDJW had the privilege of representing Employers Mutual Casualty Company in this matter and we take this opportunity to congratulate them, along with our attorneys Christopher W. Martin, Leslie Pitts and Ryan K. Geddie, in securing this significant victory.

FIFTH CIRCUIT REVERSES TRIAL COURT AND ORDERS REMAND BASED ON REMOVAL BY WRONG ALLSTATE ENTITY

Last Friday The Fifth Circuit reversed a trial court on a motion to remand because the remand was filed in the name of a non-party entity. In *Perfecto Valencia v. Allstate Texas Lloyds*, No. 20-20193, 2020 WL 5867526 (5th Cir., Oct. 2, 2020) an interlocutory appeal arose from the district court's denial of a motion to remand. Valencia filed suit against Allstate Texas Lloyd's, Inc. ("Allstate Texas") in the District Court of Harris County, Texas. Valencia alleged that Allstate Texas failed to pay for damage that was covered under a property policy. Allstate Texas Lloyds ("Allstate Illinois") rather than Allstate Texas, answered the petition and removed the case to federal court on the basis of diversity jurisdiction Allstate Illinois alleged that it was a citizen of Illinois for jurisdictional purposes.

Valencia filed a motion to remand the matter, contending that removal was improperly effectuated by a non-party to the case. Valencia argued Allstate Illinois never claimed that it was misnamed or misidentified as Allstate Texas and never sought to join the case as a defendant, but rather unilaterally "changed the case caption without notifying the parties or the court" of its intention to defend the case. The motion was denied by the district court. The district court subsequently denied Valencia's motion for reconsideration but certified the issue for interlocutory appeal. Valencia timely appealed.

The court agreed with Valencia, finding that at the time of removal, the only defendant in the case was Allstate Texas. Allstate Illinois never sought to intervene in the case or to be joined as a defendant. As a non-party, Allstate Illinois did not have the right to remove the case to federal court. The court reversed and remanded with instruction to remand to state court.