Martin, Disiere, Jefferson & Wisdom

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TEXAS INSURANCE LAW NEWSBRIEF

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FEDERAL COURT DISREGARDS JURY FINDINGS ON TREBLE DAMAGES, ENTERS TAKE-NOTHING JUDGMENT FOR CARRIER

Last week, a federal judge in Houston entered a take-nothing judgment in favor of insurer after a jury trial. *Richardson v. Liberty Ins. Co.*, No. H-21-CV-161, 2021 WL 3207972, (S.D. Tex. July 26, 2021) was a first-party wind/hail case in which the jury found no breach of contract and no bad faith. The jury did find "false, misleading and deceptive acts or practices in the business of insurance," in violation of Texas Insurance Code Chapter 541, but awarded no actual damages for the violation. The jury nevertheless awarded $7,000 in additional statutory damages, finding the violation was "knowing." Citing the Supreme Court of Texas opinion in *Menchaca*, the court concluded that in the absence of a breach of contract and because there was no showing of an independent injury, the plaintiffs were not entitled to recover statutory damages or attorney fees, regardless of the jury's verdict.

FEDERAL COURT DECLINES TO ENFORCE $75,000 DAMAGE STIPULATION

In some first-party suits against property insurers, particularly on relatively low-value residential claims, policyholders may agree in writing to limit their recoverable damages to an amount less than $75,000 in order to prevent the case from being removed to federal court. This occurred in *Gonzalez v. Meridian Security Ins. Co*., No. 4:20-CV-00643, 2021 WL 3190523 (E.D. Tex. July 28, 2021). After the plaintiffs invoked appraisal and obtained an award in the amount of $130,000, the insurer paid $75,000 in reliance on the stipulation. The plaintiffs accepted and cashed the $75,000 check, but immediately demanded payment of the remainder of the appraisal award, in violation of their prior stipulation. On receipt of the demand for more than $75,000, the insurer promptly removed the case to federal court, defeated the plaintiffs' motion to remand, and moved for summary judgment on the ground that it had fully paid the plaintiffs' recoverable damages as limited by the stipulation.

A federal district judge in Sherman disagreed, finding the stipulation was not a new contract that negated the terms of the appraisal clause, nor was it a waiver/estoppel or ratification based on either the express wording of the stipulation or the plaintiffs' conduct. Nor was the acceptance of the check an accord and satisfaction because the simultaneous demand for the rest of the award did not suggest an agreement to treat the obligation as fully satisfied. The court also denied the insurer's motion for summary judgment on extra-contractual claims and refused to find the plaintiffs' Prompt Payment claim barred by limitations, holding a four-year statute of limitations applies to those claims.

Editor's Note: This outcome leaves insurers in a difficult position when plaintiffs purport to stipulate to limit their damages as a procedural stratagem. First, a stipulation purporting to limit damages, at least in the forms currently being offered by policyholder attorneys, cannot be accepted as an enforceable agreement. However, it begs the question whether a federal court will sustain a removal in the absence of evidence the plaintiff has actually sought more than $75,000 in damages. This could leave insurers in a double bind – litigating in state court, but discovering too late that the policyholder's agreement not to seek or accept more than $75,000 in damages was a ruse. This court's ruling suggests one feasible solution may be to write more strongly worded damage stipulations that expressly and irrevocably waive all contractual rights to recover more than $75,000 under the policy, regardless of the outcome of any appraisal award or jury award. And to remove cases when policyholder attorneys decline to agree to those terms.