

TEXAS INSURANCE LAW NEWSBRIEF

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TYLER APPEALS COURT UPHOLDS SUMMARY JUDGMENT ON LIMITATIONS ISSUE IN FAVOR OF INSURER

Last week, a state appeals court in Tyler upheld a trial court's ruling granting summary judgment in favor of an insurer based on the insurer's argument that an insured's suit was barred by the statute of limitations. *Abedinia v. Lighthouse Property Ins. Co.*, No. 12-20-00183-CV, 2021 WL 4898456 (Tex. App.—Tyler Oct. 20, 2021) involved a dispute between a homeowner and her homeowner's insurance carrier arising from a Hurricane Harvey claim.

On August 28, 2017, the insured's home reportedly suffered damage from Hurricane Harvey. On August 31, 2017, she filed a notice of claim with the insurer ("Lighthouse") for wind damage in accordance with the policy. On October 13, 2017, Lighthouse sent a letter to the claimant accepting the loss and detailing the amount of compensation owed under the policy, including a check as payment for the loss.

No other activity occurred on the claim until January 28, 2019, when Lighthouse received a letter of representation from the insured's attorney, who attempted to file a written notice on the claim. In response, Lighthouse informed the insured's attorney that the claimant had already filed a notice of claim on August 31, 2017. Because Lighthouse believed it acted properly in accepting and paying the loss, and because the claimant was contesting the amount paid, Lighthouse invoked the policy's appraisal provision and reserved all rights under the policy.

The insured's attorney then sent a demand letter dated March 14, 2019, and also invoked the appraisal process. When the appraisal process began, the insured's attorney sent a second demand On October 1, 2019, naming a different appraiser. On December 3, 2019, the insured's attorney filed a declaration for an umpire appointment after the parties' appraisers arrived at an impasse. On December 9, 2019, an umpire was appointed. On December 30, 2019, Lighthouse informed the umpire that it was no longer going to participate in appraisal because limitations passed on October 14, 2019. That same day, the claimant filed suit.

Lighthouse immediately followed by filing a motion for summary judgment on the issue of limitations, alleging that the claimant failed to bring suit within the applicable limitations period. The trial court granted Lighthouse's motion, and the claimant filed her appeal.

On appeal, the Court first acknowledged that, while the normal limitations period for a breach of contract claim is four years, parties may contractually agree to a shorter time period, so long as such period is not shorter than two years. Additionally, the Court stressed that a cause of action for breach of an insurance contract accrues (and thus starts the running of the limitations period) when the claimant has notice of facts sufficient to place them on notice of the breach.

The policy at issue contained a standard provision shortening the limitations period for claims for losses caused by windstorms or hail in the "catastrophe area," as defined by the Insurance Code, to two years and one day from the date the carrier accepts or rejects the claim. It was undisputed that the insured's loss was caused by a windstorm in the catastrophe area, so this provision controlled.

Lighthouse argued, and the Court agreed, that the insured's cause of action for breach of contract accrued on October 13, 2017, when Lighthouse accepted the claim and paid the amount it determined it owed. So the limitations ran on October 14, 2019, and the claimant did not file suit until December 30, 2019.

After quickly disposing of the insured's first argument that the statute allowing for parties to a contract to shorten the limitations period did not apply to insurance contracts, the Court turned to the insured's argument that the parties' invocation of the appraisal process tolled or restarted the limitations period. Again, the claimant could cite no authority to support its argument. Indeed, Lighthouse cited authority stating that the use of appraisal process has no bearing on any deadlines or enforcing any missed deadlines, which the Court held included the limitations period.

Accordingly, the Court affirmed the trial court's judgment granting summary judgment on the limitations issue in favor of Lighthouse.