

TEXAS INSURANCE LAW NEWSBRIEF

NOV 8, 2022

APPEALS COURT REVERSES TRIAL COURT RULING DENYING INSURER'S MOTION TO ABATE A CLAIMANT'S EXTRA-CONTRACTUAL CLAIMS IN UM/UIM DISPUTE

Last week, an appeals court in Houston granted an insurer's petition for writ of mandamus asking the court to compel the trial court to vacate its order denying the insurer's motion to abate a claimant's extra-contractual claims in an uninsured/underinsured (UM/UIM) motorist coverage suit. *In re United Financial Casualty Company*, No. 14-22-00502-CV, 2022 WL 16645497 (Tex.—Houston [14th Dist.] Nov. 3, 2022).

After the claimant, Elizabeth Echeverria, was involved in a motor vehicle accident as a passenger in a vehicle operated by an Uber driver, she sought a declaratory judgment action against the Uber driver's insurer, United Financial Casualty Company (United Financial), seeking entitlement to UM/UIM benefits. In the same suit, Echeverria also alleged breach of contract, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act, breach of the duty of good faith and fair dealing, and fraud.

United Financial then asked the trial court to abate Echeverria's extra-contractual claims, which the trial court denied. The appeal followed.

The appeals court emphasized that claims for breach of contract and extra-contractual claims and alleged violations of statutory duties are separate and distinct, and a UIM insurer has no duty to pay benefits until liability of the other driver and the amount of the claimant's damages are determined. Additionally, a claimant must first establish that the insurer is liable on the contract before the claimant can recover on extra-contractual claims for failing to pay or settle a UIM claim. The appeals court also reminded Echeverria that her extra-contractual claims are premised on an alleged contractual obligation to pay her UIM claims, she had not established liability nor the underinsured status of the other driver, and allowing information from the extra-contractual claims into a trial on the breach of contract claims would be "manifestly unjust." As such, and because United Financial lacked an adequate remedy on appeal for the trial court's denial of its request for an abatement, the appeals court granted United Financial's petition and ordered it to vacate its prior order and grant abatement of Echeverria's extra-contractual claims until the declaratory judgment action and breach of contract claim were decided.

FEDERAL COURT IN SAN ANTONIO DISMISSES CLAIMANT'S EXTRA-CONTRACTUAL CLAIMS UPON FINDING BONA FIDE COVERAGE DISPUTE

Recently, a federal district court in San Antonio dismissed a claimant's claims for breach of the duty of good faith and fair dealing and violations of Chapter 541 of the Texas Insurance Code and the Texas Deceptive Trade Practices Act (DTPA) upon request by the insurer, agreeing that a bona fide coverage dispute existed that precluded the alleged bad faith claims. *Keller v. State Farm Lloyds*, SA-21-CV-00205-JKP, 2022 WL 16556647 (W.D. of Tex.—San Antonio Oct. 31, 2022).

After summarily overruling the claimant's objections to the evidence presented by the insurer (consisting of a copy of the claims file and an affidavit from the Claims Manager), the Court detailed what State Farm's undisputed evidence revealed:

Macklin Keller filed a claim with State Farm Lloyds (State Farm) for coverage benefits after a hailstorm hit his property, alleging that the storm damaged his roof and created water leaks and consequent interior damage and sending State Farm a roof repair estimate from contractor that stated the entire roof needed replacing. Thereafter, State Farm's adjuster contacted Keller's contractor, who told the adjuster that his estimate considered foot traffic from previous repairs and an incorrect prior roof installation as contributing to the need for a new roof.

Within a month, State Farm had the roof inspected. The inspection revealed hail damage to laminate roofing materials covering the porch, but not to the concrete tiles. Instead, the inspector found that the damage to the concrete tiles resulted from potential foot traffic from previous roof repairs. The inspector also noted the interior water damage and provided an estimate to the adjuster.

State Farm's adjuster reviewed the estimate, revised it, and forwarded it to management to issue payment for the covered roof repairs and interior water mitigation. That same day, the adjuster explained the results of the inspection and the subsequent estimate to Keller, as well as the need for further inspection of the roof and interior to determine the extent and source of the damage.

A virtual inspection occurred less than a month later by the adjuster, who concluded that the damage to the laminate roof over the

porch appeared to be from multiple prior storms and due to rot, deterioration, and delamination. Another adjuster took over the claim for State Farm a few days later.

The new adjuster noted a prior insurance claim from 2014 on the same property that showed overlaps on roof repairs not being completed and the need for verification of hail damage to the roof. The new adjuster then met with Keller's independent adjuster, reinspected the roof with him, claimed to have found wear and tear damage and damaged tiles from foot traffic on the roof, and determined further review was necessary to ascertain whether the damage was related to the subject hailstorm.

The Claims Manager reviewed the new adjuster's report and determined the need to hire an engineer to determine whether and to what extent any hail damage existed on the roof and whether such damage was related to the hailstorm. The Claims Manager also approved a reservations of rights letter mailed to Keller and Keller's independent adjuster explaining the need for the engineer's inspection. Keller and his independent adjuster subsequently sent State Farm an estimate for a total roof replacement.

Within a few weeks, Keller's property was inspected by an engineer retained by State Farm. The engineer concluded that the damage to the concrete tiles did not occur as a result of the subject hailstorm. Although the engineer stated that several of the tiles could have been displaced by the hailstorm, she added that a contributing factor to the displacement was the improper installation and deterioration of the fascia board. The engineer further concluded that the home had cosmetic damage to the roof due to historic events and other damage was the result of age-related deterioration, thermal expansion, quality of installation, and previous foot traffic and maintenance activity. Finally, the engineer stated that the rotted plywood roof deck indicated water intrusion of over time, prior to the reported hailstorm.

Based on its investigation, State Farm issued a partial denial letter to Keller stating that the cost to repair and replace the covered damage was less than the applicable deductible and, therefore, no payment would be made. State Farm closed the file.

Upon review of this undisputed evidence, the Court held that State Farm had conducted a reasonable and objective investigation to determine the extent and cause of the damage and promptly and objectively investigated Keller's claim before denying it. As a result, the Court held that State Farm adequately met its burden of showing the basis of Keller's action resulted from a bona fide coverage dispute, which does not rise to liability for a bad faith claim. The Court also noted that Keller did not present evidence to show that State Farm's inspector's report, the adjusters' conclusions and estimates, or the engineer's report were not objectively prepared or were prepared with an outcome-oriented approach. Rather, the evidence demonstrated only that Keller disagreed with State Farm's conclusions and its denial of liability, and Keller's disagreement, alone, was not sufficient to raise a genuine dispute over whether State Farm acted in bad faith. Thus, the Court held that, at the time State Farm reviewed, investigated, and denied Keller's claim, it had a reasonable basis for doing so as a matter of law.

Because Keller's claims for alleged violations of Chapter 541 of the Texas Insurance Code and the Texas DTPA required a showing of bad faith as a predicate and because the Court found that State Farm had a reasonable basis for denial of the claim and therefore did not act in bad faith, the Court summarily dismissed those claims as well.