Martin, Disiere, Jefferson & Wisdom

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TEXAS INSURANCE LAW NEWSBRIEF

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COURT CONCLUDES THAT ADJUSTER WAS NOT IMPROPERLY JOINED; REMANDS CASE TO STATE COURT

Last week, the U.S. District Court for the Southern District of Texas concluded that a reasonable basis existed to conclude that the insured might succeed on its claim against the adjuster; thus, the adjuster was not improperly joined and complete diversity of citizenship did not exist for federal jurisdiction. In *KSN Hospitality LLC v Great Lakes Ins*, No. 1:22-CV-092, 2022 WL 16815187 (S.D. Tex., Nov. 8, 2022, mem. op.), KSN Hospitality LLC ("KSN") (a Texas company) sued its insurer, Great Lakes, and the insurance adjuster, Luis Miller (a Texas citizen), in state court, asserting claims of breach of contract and violations of the Texas Insurance Code, in connection with Great Lakes' denial of KSN's claim for coverage for roof damage allegedly caused by a storm. As to the claims against Miller, KSN pled the following: Miller misled KSN by saying that the policy did not cover the reported damage; Miller misrepresented that the property had no storm-related damage; Miller failed to fully inspect all damage to the property and ignored the obvious damage to the property's roofing system; Miller refused to acknowledge the missing, torn, and loose shingle tabs that existed all over the roof; and Miller's conduct formed part of a results-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiff's losses on the property."

Great Lakes removed the lawsuit to federal court, contending that Miller was improperly joined and, consequently, complete diversity existed between KSN and Great Lakes to establish federal jurisdiction. In response, KSN filed a motion to remand to state court, which the U.S. District Court granted.

In granting remand, the Court concluded that "a reasonable basis exist[ed] for the Court to conclude that KSN might succeed on a claim and recover damages from Miller." Thus, Miller was not improperly joined and complete diversity of citizenship did not exist. The Court reasoned that the factual allegations against Miller "support[ed] a cause of action under Section 541.051" and "KSN sufficiently pled that Miller engaged in an inadequate investigation and, in connection with and based on that investigation, made misrepresentations to KSN regarding the terms of the policy and the benefits that KSN merited under the policy."

COURT GRANTS SUMMARY JUDGMENT IN FAVOR OF INSURER BASED ON OFF-PREMISES PROPERTY LIABILITY LIMIT

Last week, the U.S. District Court for the Southern District of Texas concluded that there was no evidence that the insurer lead the insured to reasonably believe that the sub-limit of liability coverage for damage to off-premises property had been waived, and granted summary judgment in favor of the insurer. In *J&G Trejo Enterprises, Inc. v. Western World Ins. Co.,* No. 7:22-CV-00122, 2022 WL 16748801 (S.D. Tex., Nov. 7, 2022, mem. op..), J&G Trejo Enterprises, Inc.'s ("J&G") MRI machine held off its premises was destroyed in a fire. J&G assessed its own actual loses at around $200,000.00, and made a claim with its insurer, Western World Insurance Company ("Western World"). However, due to a $10,000 sub-limit of liability for business personal property held off-premises, Western World paid only the $10,000 limit. Consequently, J&G filed suit against Western World, claiming that the insurance agent represented that property held off-premises would be fully insured, and J&G detrimentally relied on that representation. In response, Western World filed a motion for summary judgment, which the Court granted.

In granting summary judgment, the Court began by concluding that the plain terms of the insurance police provided that the most Western World had to pay for loss or damage under the Property Off-premises Extension was $10,000 and, therefore, Western World—as a matter of law—was not liable for breach of contract "unless the insurer or agent made some specific misrepresentation about the insurance." "The contractual provision creating a sub-limit of liability is quite clear, and [J&G] is charged with knowledge of it."

Next, the Court noted that "the statutory authority granted an agent under article 21.02 of the insurance code does not authorize an agent to misrepresent policy coverage and bind the insurer to his misrepresentations unless the insurer approved the agent's conduct by authorizing the agent's wrongful acts or subsequently ratified the wrongful acts." Further, "agents may be considered agents of the insurer for purposes of a lawsuit, but they may not alter or waive a term or condition of the policy." The Court concluded that there was no evidence that Western World took any action that could lead J&G to reasonably believe that the sub-limit of liability had been waived.