

THOUGHT LEADERSHIP

News

HOUSTON COURT OF APPEALS ORDERS SEVERANCE OF AN INSUREDS' BREACH OF INSURANCE CONTRACT CLAIM FROM THE INSUREDS' PROMPT PAYMENT CLAIM

Newsbrief

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On August 11, 2011, the Houston Court of Appeals ordered severance of breach of contract claim from extra-contractual claims and prompt payment claim in an insurance dispute. *In re Loya Insurance Co.*,

2011 WL 3505434 (Tex. App.—Houston [1st Dist.] August 11, 2011)

Represented by The Mostyn Firm, Fabian and Martha Jagrup sued Loya for breach of their homeowner's insurance policy, violations of the Texas Insurance Code and its Chapter 542 prompt payment provisions, violations of the common-law duty of good faith and fair dealing, and fraud. Loya then moved to sever and abate the Jagrups' breach of insurance contract claim from their extra-contractual claims. After the Jagrups agreed to sever their breach of contract claim from their extra-contractual claims, except their statutory claim for prompt payment, Loya Insurance Company sought mandamus relief from the trial court's order in which it refused to sever the insureds' prompt payment claim or to abate any of the extra-contractual claims pending resolution of the breach of contract claim. The Houston Court of Appeals disagreed with the trial court, holding that Jagrups' breach of contract and prompt payment claims present distinct claims therefore severance was appropriate. The Court declined to address Loya's request for abatement, stating that absent any showing of prejudice, discovery and management of separate trials is within the sound discretion of the trial court.