

THOUGHT LEADERSHIP

News

## FEDERAL DISTRICT COURT GRANTS SUMMARY JUDGMENT IN FAVOR OF INSURER & FINDS EXTRA-CONTRACTUAL CLAIMS BARRED BY LIMITATIONS

Newsbrief

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Also recently, in *Painter Family Investments, Ltd., L.L.P. v. Underwriters at Lloyds, Syndicate 4242 Subscribing to Policy Number 42-7560009948-L-00*, C.A. No. 1:10-cv-262, 2011 WL 6755839 (S.D. Tex. Dec. 23, 2011), U.S. District Judge Hanen (from the Brownsville Division of the Southern District) granted summary judgment in favor of a Lloyds insurer on extra-contractual claims asserted against it on grounds that the statutes of limitations barred all such claims. The extra-contractual claims asserted were (1) violations of Section 542 of the Texas Insurance Code, (2) breach of the duty of good faith and fair dealing, and (3) violations of the Deceptive Trade Practices Act, all of which are subject to a two-year limitations period.

The plaintiff, APC Home Health Service, Inc., claimed Hurricane Dolly damaged its properties in Harlingen, Los Fresnos, and Raymondville on July 23, 2008. On July 30, 2008, APC filed a claim on its policy. A claims examiner responded on behalf of the Lloyds syndicate by letter dated September 4, 2008, accepting some claims but denying others. The letter was received by the insured on September 16, 2008. On July 30, 2009, APC sent a letter requesting release of \$4,100.64, an amount held back from the initial claim disbursement as “recoverable depreciation.” It is unclear whether there was any response to this request. On November 17, 2010, APC was added as a named plaintiff to ongoing litigation filed by a related entity.

Lloyds asserted that APC’s extra-contractual claims were time-barred because they were commenced more than two years after APC’s claims were denied, which, at the latest, occurred on September 16, 2008, the date the insured received the coverage-payment position letter. APC argued, among other things, that the issues presented involve mixed questions of law and fact. According to APC, the “discovery rule” governed the accrual date for the extra-contractual claims at bar, and the application of the discovery rule involves questions of fact.

In discussing the relevant case law, the court noted that when insurance benefits are the subject of any of the extra-contractual claims at bar, the statute of limitations begins to run when the insurer denies the claim for those benefits. If a court finds that there has been an “outright denial,” then, the court is presented with questions of law in resolving the accrual date. The court found the clear denial of APC’s claims in the letter received on September 16, 2008 obviates application of the discovery rule because it unequivocally stated there was no coverage and provided a sufficient reason for the denial as to some of the claims submitted on behalf of APC. Thus, the court concluded the

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discovery rule did not apply to the accrual date of APC's claims and the statute of limitations barred all claims not brought before September 16, 2010. The court rejected APC's contention that the claims accrued on or after it made its claim for distribution of "recoverable depreciation" because it was merely a request for the release of a previously agreed-upon amount withheld from the original disbursement and it did not affect the initial denial provided to APC with facts that allowed it to pursue a judicial remedy.