THOUGHT LEADERSHIP

News

FEDERAL COURT RULES INSURED MAY PURSUE EC CLAIMS EVEN AFTER TIMELY PAYMENT OF APPRAISAL AWARD

Newsbrief
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Last Wednesday, a federal District Court judge in the Southern District of Texas found that timely payment of an appraisal award by an insurer did *not* prevent the insured from subsequently pursuing its claims for bad faith, including statutory claims under the Texas Insurance Code and Texas Deceptive Trade Practices Act. *Intermodal Equipment Logistics, LLC and Sea Train Logistics, LLC v. Hartford Accident and Indemnity Company*; Civil Action No. G-10-458 (S.D. Tex. – Galveston Div., April 18, 2012). The insurer, Hartford, moved for summary judgment on all claims brought by the insured after Hartford timely paid an appraisal award. District Judge Kenneth Hoyt referred Hartford's motion for summary judgment to Magistrate Judge John Froeschner of Galveston for report and recommendations. The parties have until May 2, 2012 to file written objections to the recommendations prior to Judge Hoyt making a final determination.

In this case, Intermodal Equipment Logistics, LLC (IEL) claimed that Hartford grossly, and in bad faith, undervalued its business income loss allegedly resulting from Hurricane Ike by only paying approximately $208,000.00. The case went through the appraisal process, resulting in an award issued in IEL's favor for $705,539.00. Hartford then moved for summary judgment, arguing that payment of the award constituted compliance with the policy and rendered Plaintiff's extra-contractual claims meritless.

The Court agreed that IEL's claims for breach of contract, prompt payment of claims act, and common law fraud should be dismissed. However, the Court denied Hartford's motion for summary judgment as to IEL's bad faith claims. Judge Froeschner recognized that "in most circumstances, an insured may not prevail on a bad faith claim without first showing that the insurer breached the contract" but concluded that Texas law recognizes three exceptions to this general rule. First, a claim for breach of an insurer's duty of good faith and fair dealing may be established if an insured can prove that a carrier denied or delayed the payment of the insured's claim when it knew or should have known that it was reasonably clear that the claim was covered. *Arnold v. National County Mutual Fire Ins. Co*., 725 S.W.2d 165 (Tex. 1987); *Universe Life Ins. Co. v. Giles*, 950 S.W.2d 48, 49 (Tex. 1987). According to *Republic Insurance Co. v. Stoker*, 903 S.W.2d 338, 341 (Tex. 1995), "the duty of an insurer to timely investigate its insured's claims is an independent tort which could be pursued in the absence of a showing that the insurer breached the insurance contract."

Second, statutory claims under the Texas Insurance Code and the Deceptive Trade Practices Act require the same predicate for recovery as bad faith causes of action in Texas and are in addition to any other remedies permitted by law. *Higginbotham v. State Farm Mutual Auto Ins. Co*., 103 F.3d 456, 460 (5th Cir. 1997) (*citing Emmeret v. Progressive County Mutual Ins. Co*., 882 S.W.2d 32, 36 (Tex. App. -- Tyler, 1994, writ denied).

Finally, in the absence of proof of a breach of contract, an insured may recover tort damages if it is shown that an insurer committed some extreme acts that caused injury independent of the policy claim. *Stoker*, 903 S.W.2d at 341 (*citing Aranda v. Insurance Company of North America*, 748 S.W.2d 210, 214 (Tex. 1988)).

As such, the magistrate denied Hartford's MSJ on the common law and statutory bad faith claims.