

THOUGHT LEADERSHIP

News

TYLER COURT OF APPEALS ISSUES CONDITIONAL WRIT OF MANDAMUS; TRIAL COURT IS DIRECTED TO SEVER AND ABATE EXTRA- CONTRACTUAL CLAIMS AGAINST INSURER

Newsbrief

30 JUL 2012

The Court of Appeals in Tyler recently conditionally issued a writ of mandamus directing the trial court to sever a breach of contract claim against Texas Farm Bureau from the remaining extra-contractual claims and abate discovery regarding the remaining claims until there is a final judgment in the breach of contract claim. *See In re Texas Farm Bureau Underwriters*, — S.W.3d —, 2012 WL 2916959 (Tex.App.— Tyler, July 18, 2012) (orig. proceeding).

Terry Graham, Jr. shot and killed Hiram Joshua Chambers. In a civil lawsuit that followed, Graham requested a defense from Farm Bureau, but Farm Bureau denied Graham's request. Graham hired attorneys to defend him, and after a trial, a jury found that Graham was not liable. Graham brought a breach of contract claim against Texas Farm Bureau seeking reimbursement of the money he paid to his attorneys and also asserted extra-contractual claims against Farm Bureau based on the duty of good faith and fair dealing that an insurer owes to its insured.

Farm Bureau filed a motion to sever and abate Graham's extra-contractual claims. Farm Bureau alleged that it had offered to settle Graham's breach of contract claim for \$15,000, and argued that, without a severance, it would be prejudiced by evidence of that settlement offer being presented at trial. Farm Bureau also contended that the extra-contractual claims should be abated until final resolution of Graham's contractual claim because information that would be privileged from discovery on the contractual claim would be subject to discovery on the extra-contractual claims. The trial court denied Farm Bureau's motion.

In conditionally granting Farm Bureau's petition, the court of appeals concluded that all of the facts and circumstances of the case unquestionably required a severance to prevent manifest injustice. Farm Bureau offered to settle Graham's breach of contract claim for \$15,000. That evidence, which is ordinarily inadmissible in the trial of a disputed breach of contract claim, may be admissible on the extra-contractual claims to rebut evidence that the insurer acted in bad faith. The court reasoned that Farm Bureau would be unfairly prejudiced by the admission of its settlement offer in the trial of the breach of contract claim, and Graham would be unfairly prejudiced by the exclusion of the settlement offer in the trial of the extra- contractual claims.

TYLER COURT OF APPEALS ISSUES CONDITIONAL WRIT OF MANDAMUS; TRIAL COURT IS DIRECTED TO SEVER AND ABATE EXTRA- CONTRACTUAL CLAIMS AGAINST INSURER

With regard to the motion to abate the extra-contractual claims, the court noted that Graham would seek information through discovery regarding Farm Bureau's handling of the underlying claim made the basis of the breach of contract. The court stated this information is relevant and discoverable on the extra- contractual claims, but is privileged and protected from discovery when focusing only on the breach of contract claim. Thus, the court held that Farm Bureau had also shown that the trial court abused its discretion in denying its motion to abate.