

THOUGHT LEADERSHIP

News

## FEDERAL DISTRICT COURT CONCLUDES INSURER MAY DENY A CLAIM AFTER APPRAISAL IF LOSS WAS NOT THE RESULT OF A COVERED CAUSE

Newsbrief

30 JUL 2012

Last Monday, in *Amtrust Ins. Co. of Kansas, Inc. v. Starship League City, L.P.*, C.A. No. 4:11–CV–00672, 2012 WL 2997404 (E.D. Tex. July 23, 2012) (Clark, J.), Judge Ron Clark (Federal District Court Judge from the Beaumont Division of the Eastern District of Texas) denied a motion to dismiss filed by Starship League City in a declaratory judgment action initiated by its insurer, Amtrust. Amtrust filed the action seeking judgment declaring and determining the rights of the parties related to, among other things, the liability for and damage covered under the Amtrust policy and whether the insured complied with its conditions precedent to recovery. The insured filed a motion to dismiss asserting that Amtrust was precluded from challenging the appraisal award issued by an umpire regarding the cost of replacing Starship's roof. Starship argued the Texas Supreme Court made it clear in *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 891 (Tex. 2009), that the appraisal process is determinative, and the umpire's award binds the parties and forecloses further litigation by the parties. In denying the motion to dismiss, the court concluded that *Johnson* did not foreclose the rights of an insurer to deny a claim on the basis that a loss was not the result of a covered cause.