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News

SOUTHERN DISTRICT OF TEXAS DETERMINES THAT AN INSURER'S PAYMENT OF AN APPRAISAL AWARD NEGATES AN INSURED'S BREACH OF CONTRACT CLAIM

Newsbrief

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Over the Winter break, the United States District Court for the Southern District of Texas—McAllen Division granted an insurer's Motion for Summary Judgment regarding an insureds' breach of contract and extra-contractual claims in *Scalise v. Allstate Texas Lloyds*, 7:13-CV-178, 2013 WL 6835248 (S.D. Tex. Dec. 20, 2013).

The Insured owned a residence in McAllen, Texas that was insured by Allstate. The insured made a claim for hail damage under his homeowner's policy, and Allstate inspected the property and determined that the total covered damages equaled \$551.79. Allstate applied the \$500 deductible and issued payment in the amount of \$51.79. Afterward, the insured's attorney immediately invoked appraisal. Both Allstate and the insured selected their appraisers, and the appraisers agreed on an umpire. The appraisers inspected the property and exchanged estimates. But, the insured's appraiser provided an estimate of \$56,881.88 and Allstate's appraiser calculated the damages at \$423.76. After receiving the estimate from Allstate's appraiser, the insured attempted to withdraw from the appraisal process on the basis that Allstate had breached the appraisal clause requirement that it select a competent appraiser. Afterward, but before the umpire decided the appraisal award, the insured filed this lawsuit against Allstate.

Less than a month after suit was filed, the umpire rendered his decision setting the amount of loss at \$9,795.30. Allstate's appraiser agreed to the decision, and Allstate issued a check to the insured and his attorney. Allstate then moved for summary judgment on Plaintiff's claims.

In its opinion, the Court noted that the Texas Supreme Court recognizes a strong policy in favor of enforcing appraisal clauses in insurance contract. The scope of appraisal is damages, not liability. Plaintiff argued that Allstate's appraiser essentially mimicked Allstate's loss determination, and it was not a competent estimate because it failed to include obvious covered damages. The Court dismissed Plaintiff's argument and stated that even assuming that Allstate's appraiser undervalued Plaintiff's covered damages, his estimate did not determine the award under the policy. In fact, the umpire and Allstate's appraiser agreed to a much higher figure than what Allstate's appraiser initially recommended. The Court further stated that if insureds were permitted to invoke appraisal, await the estimates, and then determine whether to risk an unfavorable award or commence litigation, the

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entire purpose of an appraisal—to resolve the parties' dispute without incurring the time and expenses of litigation—would be vitiated. The Court stated that the appraisal clause binds the parties to the extent the amount of loss is determined in a particular way.

The Court noted that Plaintiff's breach of contract claim did not seek to set aside the appraisal award, rather, the claims focused on Allstate's alleged failure to appoint a competent appraiser and to pay for all of the covered damages. The Court carefully analyzed Plaintiff's breach of contract claim and noted that when parties disagree on the amount of loss and submit to the contractual appraisal process to resolve the dispute, and the insurer pays all covered damages determined by the appraisal award, the insured may not then argue that the initial failure to pay those damages equates to breach of contract. The Court explicitly stated that the amount of an appraisal award does not determine if there was a breach, but rather a contractual alternative to determine whether the damages were undervalued.

Last, the Court analyzed Plaintiff's extra-contractual claims. The Court noted that Allstate's payment of the appraisal award precludes the bad faith claims because an insured may not prevail on a bad faith claim without first showing the insurer breached the contract. As such, the Court granted Allstate's Motion for Summary Judgment.