

THOUGHT LEADERSHIP

News

## SOUTHERN DISTRICT GRANTS INSURER'S SUMMARY JUDGMENT ON INSURED'S BREACH OF CONTRACT AND BAD FAITH CLAIMS

Newsbrief

31 MAR 2014

On March 13th, in *15625 Ft. Bend Ltd. d/b/a Mercedes-Benz of Sugarland v. Sentry Select Ins. Co.*, 2014 WL 1052608 (S. D. Tex. Mar. 13, 2014), a Federal District Court Judge dismissed all causes of action asserted by the insured, Mercedes-Benz, against the insurer, Sentry Select Insurance Company ("Sentry"). Mercedes-Benz brought claims against Sentry for bad faith, breach of contract, and violations of the Texas Insurance Code/DTPA.

Mercedes-Benz sought to recover payment under an Error and Omissions Liability Policy and Commercial Excess/Umbrella Policy issued by Sentry to Mercedes-Benz, for thirty-eight vehicles sold to, but not paid for by, vehicle wholesaler Tag Teams, Inc. and its president, Timmy Tieu. The title clerk at Mercedes-Benz, Sue Baze released the titles to the vehicles to Tieu before the payments for them were received and someone else at Mercedes-Benz released the vehicles to Tieu, who subsequently did not pay for them.

When Mercedes-Benz discovered the loss, it made a claim to Sentry, which paid Mercedes-Benz the \$100,000 limit of the "false pretense coverage" of the policy. Sentry then paid another \$100,000 in entering into a settlement with Mercedes-Benz by which all of its claims against Sentry were released, except for two exceptions. The relevant exception was "any claim for coverage Mercedes-Benz may have for any claim Mercedes-Benz may have against Baze under the Error and Omission coverage and excess/umbrella policy, and any claim for breach of duty of good faith dealing or Insurance Code claims relating to such." Mercedes-Benz also sued Tieu and a few other parties (not Baze) and obtained a judgment against Tieu after he defaulted.

In this suit, Mercedes-Benz essentially claimed coverage for the stolen vehicles. Mercedes Benz argued Baze was an insured under the policy's "Separation of Insured" provision, making Baze a separate insured; therefore allowing Mercedes-Benz to bring a claim directly against Sentry under the Error and Omissions coverage. In summary, the Court rejected Mercedes-Benz's arguments and agreed with Sentry that Mercedes-Benz clearly sought recovery for its own loss, i.e. a first party loss for vehicles sold and transferred by it for which it never received payment. Thus, there is no coverage under the Error and Omissions coverage because that coverage is third party liability coverage. Further the Court agreed with Sentry that because Mercedes-Benz had not obtained a judgment against Baze, it had no standing to sue Sentry directly under the Error and Omissions coverage.