

THOUGHT LEADERSHIP

News

HOUSTON COURT OF APPEALS GRANTS MANDAMUS TO SEVER & ABATE EXTRA-CONTRACTUAL CLAIMS

Newsbrief

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Last Thursday, in *In re Allstate County Mutual Insurance Company*, 2014 WL 5285850 (Tex. App.—Houston [1st Dist.] Oct. 16, 2014), Houston's First Court of Appeals granted mandamus relief to partially sever and abate extra-contractual claims against an insurer, pending resolution of the breach of contract claim.

After a single-car auto accident left a child dead, the child's family sought underinsured motorist benefits from Allstate, the business auto insurer for the employer of the child's father. Allstate denied the claim, concluding that neither the father nor the child were insureds under the policy issued to the father's employer. The family sued Allstate for breach of contract, common-law bad faith, and violations of the Texas Insurance Code. They also sued an insurance agent, alleging that in the event they were found not to be insured under the policy, both Allstate and the agent had made misrepresentations on which they relied.

Allstate moved to sever and abate all causes of action other than breach of contract, arguing that Texas law generally requires the claimant to prove contractual entitlement to the policy proceeds before it can recover extra-contractual damages. Although the trial court denied this motion, the Court of Appeals, considering the issue under the mandamus standard, agreed with Allstate. The court observed that ample Texas case law supports the requirement that a showing of contractual liability is generally a threshold finding for extra-contractual claims. The court also noted a separate line of cases establishing this rule in the specific context of underinsured motorist insurance claims. The court agreed that being required to prepare for and litigate claims that are not ripe and may be rendered moot is a burden which has no adequate remedy by appeal, and justifies mandamus relief.

However, with regard to the misrepresentation claims, the family pleaded them in the alternative to the breach of contract, so proving contractual liability was not a prerequisite to recovery. Just as importantly, the agent had *not* filed a similar motion for severance, leaving one set of misrepresentation claims still combined with the contract claim, thus preventing severance.

This finding highlights two lessons: First, severance and abatement of extra-contractual claims can be achieved based on the prejudice involved in being required to litigate claims which may be rendered moot. And second, when claims are alleged against more than one defendant, concerted action by all affected co-defendants may be critical

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to achieving success.