

THOUGHT LEADERSHIP

News

NO BREACH OF CONTRACT OR EXTRA-CONTRACTUAL LIABILITY WHEN CARRIER TIMELY PAYS AN APPRAISAL AWARD IN FULL

Newsbrief

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In *Quibodeaux, et al. v. Nautilus Insurance Company, et al*, Case No. 1:10-cv-739 (ED Tex, March 10, 2015), the United States Magistrate Judge for the Eastern District of Texas addressed a first party commercial property insurance dispute arising out of damages to two properties during Hurricane Ike. The carrier removed the dispute to federal district court and moved to compel binding appraisal under the insurance contract. The Court granted the motion, and later entered an appraisal award for \$43,037 on one property and \$25,087 on the other property. The Carrier promptly paid the awards in full within twenty days and the Plaintiffs accepted and cashed the payments. The Carrier then moved for summary judgment on Plaintiffs' breach of contract claims and extra-contractual claims (violations of the duty of good faith and fair dealing, violations of the Texas Insurance Code, violations of the prompt payment of claims and violations of the Texas DTPA).

The Magistrate recommended the District Court rule that a breach of contract claim does not survive where the Carrier timely pays all damages determined by the appraisal. Additionally, the Plaintiff is estopped from suing the Carrier for the initial failure to pay which subsequently resulted in the demand for appraisal. The Plaintiff attempted to argue it still had a claim for its contents damages which were not addressed by the appraisal award, but the Magistrate rejected the contents claim because a different Carrier had paid the same contents claim, and because it was untimely submitted in this case after the appraisal.

The Magistrate also recommended rejecting the extra-contractual claims because there was no breach of contract. The Magistrate recognized the general rule that extra-contractual liability normally requires a breach of contract. Without a breach of contract, the only basis for finding extra-contractual liability would be if one of the "*Stoker* exceptions" applied, either 1) the Carrier committed some act so extreme that it would cause injury independent of the Policy claim, or 2) the Carrier failed to timely investigate the insured's claim. The Magistrate noted that neither party argued these exceptions. Additionally, the Magistrate recognized the "failure to timely investigate" exception is not met by evidence that the adjuster investigating the structure claim was busy adjusting many Ike claims at the same time. The Magistrate further recommended that allegations claiming the adjuster's investigation was "incomplete" do not meet either *Stoker* exception. Finally, the Magistrate recognized Plaintiffs' "prompt payment of claim" cause of action failed when the Carrier timely paid the full appraisal award. The Magistrate recommended a full summary judgment on all of Plaintiffs' claims be granted to the Carrier.