

THOUGHT LEADERSHIP

News

## DALLAS FEDERAL COURT GRANTS PARTIAL SUMMARY JUDGMENT IN FAVOR OF STATE FARM IN APPRAISAL CASE

Newsbrief

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Last week, Judge Jane Boyle of the Northern District ruled in favor of most of State Farm's claims because of its prompt payment of an appraisal award. *Graber v. State Farm Lloyds*, No. 3:13-CV-2671-B, 2015 WL 3755030 (N.D. Tex. June 15, 2015), involved a dispute between policyholder Kenneth Graber and State Farm regarding the scope of hail damage to Mr. Graber's home. After State Farm completed an initial estimate of \$3,443.96 for repairs, it sent Graber the difference after deductions for depreciation and the deductible. Dissatisfied with this payment, Graber requested that State Farm send a different adjuster to reinspect the property. The second adjuster found damage to the front-porch flashing that was not addressed in the additional estimate, and State Farm issued Graber a supplemental payment of \$121.77.

After Graber retained counsel and sent State Farm a DTPA demand letter, State Farm inspected the property for the third time but did not find any additional damage. Graber filed suit and invoked the appraisal provision in the insurance policy. Both parties' appraisers agreed to an appraisal award of \$12,898.59, which State Farm paid three days later after making the appropriate deductions for previous payments and the deductible.

State Farm moved for summary judgment on the ground that Graber's participation in appraisal and State Farm's timely payment of the award estopped Graber from maintaining his claims against State Farm. The Court first rejected Graber's argument that State Farm breached the contract because the appraisal award exceeded its initial settlement. The Court relied on well-settled authority that the fact that an appraisal award is greater than the initial payment is not sufficient evidence to establish a breach of contract if the insurer timely pays the award. While not disputing this general rule, Graber made a number of arguments that the Court similarly rejected. For example, Graber argued that *Breshears*,<sup>[1]</sup> another appraisal case relied on by the Court, was distinguishable because the plaintiffs in that case had accepted the insurer's initial settlement, whereas Graber had challenged every payment made by State Farm. The Court rejected this argument, noting that there were numerous other cases in which courts had relied on the general rule regardless of whether the policyholders had agreed to the initial settlement.

The Court also rejected Graber's argument that *Breshears* and other cases involved prompt-payment claims, whereas Graber had also asserted claims regarding State Farm's allegedly inadequate investigation. The Court found that even if this was true, Graber had introduced no evidence to support his claim that State Farm performed an

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inadequate investigation. Because Graber's only evidence was the fact that the appraisal award exceeded the initial payments, the Court granted State Farm's summary judgment on Graber's claims for breach of contract, common law bad faith, and statutory bad faith under the Texas Insurance Code.

Although the Court resolved most claims in State Farm's favor, it found that State Farm had not met its summary judgment burden on Graber's claims under Section 541.061 of the Insurance Code and Section 17.50(a)(1) of the DTPA, which prohibit misrepresentations regarding coverage and the claims-handling process. The Court did not necessarily find that Graber had introduced sufficient evidence to create a fact issue on these claims, but rejected State Farm's argument that these claims failed for the same reason that Graber's other bad faith claims failed.

Finally, the Court rejected State Farm's argument that the prompt payment of an appraisal award precluded Graber's entitlement to statutory interest under the Prompt Payment of Claims Act. The Court looked to the Fifth Circuit's opinion in *Higginbotham*,<sup>[2]</sup> which held that an insurer is strictly liable for failure to promptly pay a claim, to conclude that State Farm could not rely on a "good faith" defense to avoid paying statutory interest. Although the Court did not expressly say so, this interest would presumably only apply to the difference between the original settlement amount and the amount that State Farm paid after the appraisal.

**[Editor's Note:** State Farm was represented by Christopher W. Martin and Ryan K. Geddie of Martin, Disiere, Jefferson & Wisdom, L.L.P. Martin Disiere congratulates them on their success in securing judgment on most of the plaintiff's claims].

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[1] *Breshears v. State Farm Lloyds*, 155 S.W.3d 340, 343 (Tex. App.—Corpus Christi 2004, pet. denied).

[2] *Higginbotham v. State Farm Mut. Auto. Ins. Co.*, 103 F.3d 456, 460 (5th Cir. 1997).