

THOUGHT LEADERSHIP

News

INSURER SUCCESSFULLY INVOKES APPRAISAL CLAUSE LATE IN THE LAWSUIT

Newsbrief

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The Amarillo Court of Appeals construed an insurer's demand to invoke the appraisal clause in its commercial property insurance policy with its insured after the parties had conducted discovery, designated experts and unsuccessfully mediated the matter. *In Re Century Surety Co.*, 2015 WL 6689532 (Tex.App.-Amarillo November 2, 2015.) the insured rejected Century Surety's May 1, 2015 demand for appraisal. Century then tendered a written offer to settle the insured's claims on June 18 which was also rejected. Century then moved to compel appraisal and to sever and abate the extra-contractual claims. The insured argued that Century waived its right to appraisal. The trial court denied Surety's motions on August 10 and September 15, 2015. Trial was set for December 14, 2015, with a discovery cutoff of November 13.

The Court of Appeals recognized that waiver of a right to appraisal requires an intentional relinquishment of a known right or intentional conduct inconsistent with claiming the right. To establish "waiver," the party challenging appraisal must show the parties reached an "impasse" and that the failure to demand appraisal within a reasonable time prejudiced the opposing party. Since the insured failed to make a showing of "prejudice," the Court of Appeals found the trial court abused its discretion by failing to compel appraisal without deciding if the parties had reached an impasse. Additionally, because the insured alleged claims of breach of contract and extra-contractual claims, the trial court was held to have abused its discretion in not severing and abating the extra-contractual claims because Century had offered to settle the claims.