

THOUGHT LEADERSHIP

News

IMPORTANT BAD FAITH QUESTION BEFORE THE TEXAS SUPREME COURT

Newsbrief

13 JAN 2016

The Fifth Circuit Court of Appeals has sent a certified question to the Texas Supreme Court asking the high court to clarify the bad faith standard in Texas, and the Texas Supreme Court has accepted the case and issued an aggressive briefing schedule in *IN RE: DEEPWATER HORIZON Cameron International Corporation v. Liberty International Underwriters*, No. 14–31321, ___ F.3d ___ (November 19, 2015).

The certified question addresses arguments made by the policyholder in this case as to whether *Vail v. Texas Farm Bureau Mut. Ins. Co.*, 754 S.W.2d 129 (Tex. 1988) remains good law in Texas. The issue is whether a plaintiff suing an insurer for bad faith under the Texas Insurance Code must prove damages which are independent of the breach of contract in order to support the extra-contractual claims against an insurer. The insured argued in the Federal District Court in New Orleans as well as before the Fifth Circuit that the old *Vail* decision from 1988 remains good law and no independent injury is required. LIU, in contrast, argued the matter was settled by the Texas Supreme Court a decade ago in *Provident American Ins. Co. vs. Castaneda*, 914 S.W.2d 273 (1996), and an independent injury is required in order for an insured to recover extra-contractual damages under Texas law. Although the Fifth Circuit has followed *Castaneda* in multiple prior cases over the past decade, this Panel decided to certify the question to the Texas Supreme Court.

The Fifth Circuit certified the following question to the Texas Supreme Court: “Whether, to maintain a cause of action under Chapter 541 of the Texas Insurance Code against an insurer that wrongfully withheld policy benefits, an insured must allege and prove an injury independent from the denied policy benefits?”

The brief of LIU in the Texas Supreme Court is due at the end of January and amicus briefs from other insurers are being sought. If any carrier is interested in joining with others in the insurance industry to make sure that all of the appropriate issues are fully briefed before the Texas Supreme Court, please contact Chris Martin at 713-632-1701 or by email at: martin@mdjwlaw.com

[Note: Chris Martin, Robert Dees and Kevin Cain of Martin, Disiere, Jefferson & Wisdom have had the privilege of representing Liberty International before the Federal District Court in New Orleans, before the Fifth Circuit Court of Appeals, and before the Texas Supreme Court along with Judy Barrasso and Catherine Giarruso of the Barrasso Usdin firm in New Orleans, and we thank LIU for the opportunity to do so.]