

THOUGHT LEADERSHIP

News

AMICUS SUPPORT REQUESTED FOR IMPORTANT BAD FAITH CASE BEFORE THE TEXAS SUPREME COURT

Newsbrief

19 FEB 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?”

Oral argument is scheduled before the Texas Supreme Court on Tuesday, March 8th, in Austin. The briefs of all the parties have now been filed and amicus briefs from other insurers and trade groups are being sought. If any carrier or trade group 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.