

THOUGHT LEADERSHIP

News

CONTRACTUAL LIMITATIONS PERIOD BARS SUIT IN HO BAD FAITH SUIT

Newsbrief

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In *Feurtado v. State Farm Lloyds*, 2016 WL 747777, No. 13-14-00488 – CV (Tex.App. -Corpus Christi-Edinburg February 25, 2016), the insured sued State Farm Lloyds, his homeowners insurer, alleging they underpaid his insurance claim submitted in February 2011. The claim arose out of a plumbing leak that caused water damage to his home. On February 21, 2013, the insured filed suit alleging breach of contract, breach of the duty of good faith and fair dealing, and violations of various provisions of the Texas DTPA and Texas Insurance Code. State Farm filed a motion for summary judgment alleging the suit was barred by the two year contractual limitations period in the insurance policy. The Court agreed and granted a case summary judgment in favor of State Farm.

The Court reasoned that a cause of action accrues when facts come into existence which authorizes a party to seek a judicial remedy. This is when the statute of limitations is triggered, unless the Plaintiff alleges the “discovery rule” that would defer the running of the statute. The discovery rule applies in instances when “the nature of the injury incurred is inherently undiscoverable and the evidence of injury is objectively verifiable.” An injury is “inherently undiscoverable when “it is the type of injury that could not be discovered through the exercise of reasonable diligence.”

In the instant case, the Court recognized the undisputed summary judgment evidence showed State Farm paid the covered losses and notified the insured in writing on February 14, 2011. The claim file was formally closed on February 16th. The insured filed suit two years and five days later. The insured argued because of the discovery rule the cause of action did not accrue until several months later when he discovered the “full extent” of the alleged damages and realized State Farm had allegedly underpaid the claim. The Court disagreed and held the discovery rule did not apply for two separate reasons: 1) State Farm’s action in February 2011 “left no ambiguity concerning the finality of its determination” of the claim, and 2) the insured failed to raise the discovery rule in his response to the motion for summary judgment.