

THOUGHT LEADERSHIP

News

COMPLIANCE WITH APPRAISAL AWARD IN WIND/HAIL CASE ENDS ALL CLAIMS

Newsbrief

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In *Mark Dizdar and Kelly Dizdar d/b/a Dizdar Development, Ltd and Penta Valley Rentals, LLC v. State Farm Lloyds, et al*, 2016 WL 695777, No. 7:14-CV-664 (S.D.Tex. February 22, 2016), the insureds filed suit against State Farm and the adjuster for claims related to storm damages to their property in McAllen, Texas, from the now-infamous March 2012 hail and windstorm in the Rio Grande Valley.^[1]

The claim adjuster inspected the property on June 28, 2012 (shortly after the claim was made) and estimated the covered losses \$7,980. State Farm issued payment for \$4,970.80, after applying depreciation and the deductible. The insureds requested a re-inspection, and the same adjuster re-inspected the property on August 18th. Based on his new findings, State Farm issued a \$1,743.35 supplemental payment. State Farm then closed its file. State Farm's next communication from the insureds was almost two years later when they received suit papers filed by Steven Mostyn on April 16, 2014. State Farm removed the case to federal court. The Court agreed to abate the case while the parties pursued contractual appraisal in April 2015. On October 9, 2015, the Court was apprised that that an award had been issued jointly by both parties' appraisers, and State Farm had promptly paid the Award, less the applicable deductible and prior payments. State Farm asked for the case to be dismissed because of their payment and the court granted summary judgment in favor of State Farm.

The Court granted summary judgement on the breach of contract claims because "Texas law dictates that the insured is estopped from maintaining a breach of contract claim when the insurer makes a proper payment pursuant to the appraisal clause." Moreover, the Court specifically held that the difference between the initial estimate and the subsequent larger appraisal award does not show a breach of contract: "Texas law clearly holds the discrepancy between the initial estimate and the appraisal award cannot be used as evidence of breach of contract." Additionally, according to the Court, the initial denial of coverage for certain items did not constitute a breach of contract when they were later included in the appraisal award.

The Court also ruled against the insured on their poorly alleged claims for breach of the duty of good faith and fair dealing, violation of the Prompt Payment of Claims statute, fraud and conspiracy. Regarding the duty of good faith and fair dealing, the Court noted that all of the insured's allegations focused on the investigation and handling of the claim. Consequently, the Court held there was no allegation of "independent injury" that would be required to sustain a claim for breach of the duty of good faith and fair dealing. Regarding the prompt payment of claims, the Court

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noted that “full and timely payment of an appraisal award under the policy precludes an award of penalties under the Insurance Code’s prompt payment provisions as a matter of law.” Because the insureds “failed to allege an action which would constitute a violation of the now-resolved payment dispute,” the Court granted summary judgment. Finally, the Court ruled against the insureds on the fraud and conspiracy claims because “to the extent these allegations even properly state a claim, Defendants have sufficiently showed the absence of a genuine issue of material fact by proffering evidence of proper completion of the appraisal process and tendering of payment. In contrast, Plaintiffs have failed to offer evidence to the contrary.”

[1] This case should not be confused with the identically styled case brought by the same Plaintiff’s counsel, Steven Mostyn, in the same area, but under a different Civil Action No. 7:14-CV-00445 (S.D. Tex)(Hon. Hinojosa.) This case arose from the same storm, but involves a different property, in Mission, Texas. A similar motion for summary judgment is set for hearing March 22, 2016.