

THOUGHT LEADERSHIP

News

## TIMELY PAYMENT OF APPRAISAL AWARD PRECLUDES CONTRACTUAL AND EXTRA-CONTRACTUAL CLAIMS

Newsbrief

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Recently, the Fourteenth Court of Appeals reversed a Galveston trial court and rendered a take nothing judgment on all claims after the insurer timely paid an appraisal award. In *Ozier Hurst v. National Security Fire & Casualty, et al.*, No. 14-15-00714-CV (Tex.App.—Houston [14th Dist.] May 23, 2017), National Security sought to reverse a trial court denial of a motion for directed verdict based on the payment of an appraisal award.

Ozier Hurst filed a claim with his insurer National for Hurricane Ike damage. National assigned the claim to an independent adjuster who inspected the home and prepared an estimate. National paid Hurst based on the estimate, but he did not use any of the money to repair his property or request a re-inspection or inspection of additional property. Instead, Hurst filed suit.

After litigation began, counsel for Hurst invoked the appraisal provision of the Policy. Both parties selected appraisers but they could not agree on the amount of the loss. The Court appointed an umpire and he issued an award. National promptly issued a check to Hurst and his counsel for payment of the award. Hurst did not move to set aside the award or cash the check, but continued pursuing his lawsuit. At trial, National moved for a directed verdict based on the payment of the appraisal award and no independent injury. The trial court denied the motion. The jury eventually returned a verdict for Hurst on breach of contract, and the statutory and common-law bad faith causes of action.

On appeal, National argued the directed verdict should have been granted because payment of the appraisal award precludes Hurst's claims. Hurst argued his refusal to accept the tendered payment allowed him to maintain his breach of contract claim and that National's inclusion of a release with the tender made it a conditional. Hurst further argued that National breached the policy by conditioning its tender of the appraisal award on a release of extra-contractual claims.

The Court disagreed with Hurst and found that tendering payment for an appraisal award estops an insured from bringing a breach of contract claim against an insurer, and that the trial court erred in denying the directed verdict on the breach of contract claim. As to the extra-contractual claims, the Court found that prompt payment claims were precluded by the timely payment of the appraisal award. Hurst's additional extra-contractual claims were similarly

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precluded because he received the benefits to which he was entitled under the policy and did not allege any act so extreme as to cause independent injury.

The Court concluded by noting that the appraisal process is an extra-judicial means designed to avoid litigation on the issue of damages and that an insured cannot defeat an appraisal award simply by refusing to accept payment or by asserting extra-contractual claims that are derivative of the policy claim. The Court reversed the trial court's decision and rendered a take nothing judgment in favor of the insurer.