

THOUGHT LEADERSHIP

News

HOUSTON COURT OF APPEALS ENFORCES NOTICE CONDITION AND RULES ACTUAL KNOWLEDGE OF SUIT IRRELEVANT

Newsbrief

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The Houston Court of Appeals recently affirmed an insurer's summary judgment win on violation of a CGL policy's notice provision. In *Hoel v. Old American County Mut. Fire Ins. Co.*, No. 1-16-00610-CV, 2017 WL 3911020 (Tex. App. – Houston [1st Dist.] Sep. 7, 2017), Old American's insured was sued as a result of an auto accident. The insured did not tender the suit to Old American, and Hoel took a default judgment. Hoel then sued Old American to recover the judgment.

Old American sought and won summary judgment on the ground that the insured's failure to comply with the policy's notice condition and the resulting default judgment constituted prejudice as a matter of law and barred coverage for the claim. Hoel relied on correspondence showing Old American had actual knowledge of the lawsuit and argued actual knowledge prevented a finding that Old American had been prejudiced.

The court of appeals relied on and followed the seminal 2008 case of *National Union v. Crocker*, which expressly held that actual knowledge of the suit does not preclude a showing of prejudice as a matter of law. *Crocker* made clear that knowing suit has been filed and knowing the insured expects and wants a defense are two different things. Thus, the trial court properly granted summary judgment and the court of appeals quickly affirmed it in a short, blunt opinion.

While Texas jurisprudence has steadily eroded the enforcement of policy conditions over the years by adding prejudice requirements, and it is often difficult to obtain summary judgment on more nuanced coverage defenses in Texas state courts, this case shows that failure to provide notice of the suit which results in a default judgment can still be a "sure thing."