

THOUGHT LEADERSHIP

News

## DISTRICT COURT GRANTS SUMMARY JUDGMENT IN FAVOR OF INSURER BASED ON FAILURE TO PROVIDE PROPER NOTICE OF CLAIM, INCLUDING SUBSEQUENT SIMILAR CLAIMS.

Newsbrief

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On September 18th, Judge Amos L. Mazzant of the Eastern District of Texas adopted the report and recommendations of a magistrate and granted an insurer's motion for summary judgment based on failure to provide proper notice of a claim. In *Adi WorldLink, LLC v. RSUI Indem. Co.*, No. 4:16-CV-665, 2017 WL 4112112 (E.D. Tex. Sept. 18, 2017) the District Judge analyzed whether the insured's failure to provide notice on a "claims made" policy, precluded coverage.

This case arose from an insurance coverage dispute between RSUI Indemnity Company and its insured. The insured sought defense cost coverage from the insurer, for several claims made against the insured from 2014 through 2016. The insurer denied coverage and the insured sued alleging breach of contract and violation of various provisions of the Texas Insurance Code and the Texas Deceptive Trade Practices Act. In early 2014, two former employees filed a complaint against the insured before the American Arbitration Association, alleging that the insured failed to pay overtime for at least three years and improperly categorized employees as "exempt" employees. On or before August 11, 2014, the insured had notice the claim had been filed. Beginning around April 2015, other employees initiated arbitration proceedings for the same allegedly improper employment practices. The Court referred to these claims as the "2015 Claims." The insured notified its insurer of all the claims on September 16, 2015. The claims were denied on October 5, 2016 due to untimely notice and because each of the claims is "interrelated" such that they constitute a "single claim" under their policies. The insured had a Directors and Officers liability insurance policy for 2014 and a subsequent policy for 2015. Both Policies were "claims made" policies requiring prompt written notice as a condition precedent to the insurer's obligation to pay. The policies also required written notice if the insured "becomes aware of any facts or circumstances which may reasonably be expected to give rise to a Claim."

The insured filed suit seeking declaratory judgment and damages for breach of contract. The insurer moved for summary judgment and the insured moved for partial summary judgment. After responses and replies had been filed the Magistrate Judge entered a recommendation that the insurer's motion for summary judgment be granted as to all claims. The insured objected to the Magistrate Judge's findings. The insured's primary objection with the Report and Recommendation was the finding that the insured's failure to report the first Claim precluded coverage of the

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2015 Claims. The insured argued that *Gastar Exploration Ltd. v. U.S. Specialty Ins. Co.*, 412 S.W.3d 577 (Tex. App.—Houston [14th Dist.] 2013) (pet. den.) was directly on-point and required a different result. They also argued that the Magistrate's recommendation was based on a mistaken coverage analysis. The court affirmed the insurer's argument that *Gastar* was distinguishable because the denial of coverage in that case was based on an argument that the claims fell outside of the policy period and not on a notice provision. Citing *John M. O'Quinn P.C. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 33 F. Supp. 3d 756, 768 (S.D. Tex. 2014), the court further reasoned that under Texas law, an interrelatedness condition can be utilized to determine whether a claim made during the subject policy period should be deemed to have been first made at the time of an earlier claim. The Court agreed with the Magistrate Judge and found that *Gastar* was materially distinct from the present case.

In their second objection, the insured asserted that the Magistrate Judge's findings against the insured's extra-contractual claims were predicated on an erroneous finding of no coverage. The Court observed that if there is no policy coverage, absent an extreme act, an insured's claims for failure to promptly to pay claims, failure to fairly investigate claims, and bad faith denial of claims all fail under Texas law. The Court noted that the Magistrate Judge correctly found there was no coverage in this case and then appropriately recommended dismissal of insured's extra-contractual claims. The Court then adopted the recommendations of the Magistrate Judge and dismissed all of the insured's claims.