THOUGHT LEADERSHIP

**News**

# COURT FINDS INSURED'S LACK OF NOTICE OF CLAIM OR LAWSUIT UNDER AUTOMOBILE LIABILITY POLICY CONSTITUTES PREJUDICE AS A MATTER OF LAW

Newsbrief
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Last Thursday, the Austin Court of Appeals affirmed a trial court's grant of summary judgment in favor of an automobile liability insurer finding the insured's lack of notice of the accident or the lawsuit, prejudiced the insurer as a matter of law and precluded coverage under the policy. In *Victor Egly v. Farmers Ins. Exch. a/k/a Farmers Ins.*, Appellee, No. 03-17-00467-CV, 2018 WL 895043, (Tex. App.—Austin Feb. 15, 2018), Farmers insured, Ismael Hernandez, was driving an insured vehicle and was involved in a collision with Victor Egly. Egly sued Hernandez for negligence but Hernandez did not tender or notify Farmers of the lawsuit. Egly's attorney, however, sent several messages directly to Farmers informing them of the lawsuit and a possible default judgment to be taken against their insured. Farmers sent messages to Hernandez inquiring about the case, but Hernandez did not respond. Consequently, Hernandez never notified Farmers of the lawsuit or requested a defense.

After obtaining a default judgment, Egly sued Farmers, seeking payment of the judgment as a third-party beneficiary to the insurance policy. Farmers filed a motion for summary judgment, arguing that it had no duty to defend the lawsuit against Hernandez and, no duty to pay the judgment as a matter of law, because Hernandez never informed his insurer of the lawsuit as required by the policy. The trial court rendered a summary judgment in Farmers' favor, and Egly appealed.

In his appeal, Egly argued that the trial court erred because Farmers did not establish as a matter of law that it had no duty to defend the lawsuit. Farmers argued that it did not receive notice from Hernandez concerning the accident and Egly's lawsuit as required by the policy, and that it was therefore, prejudiced as a matter of law. Egly responded by asserting Farmers undisputedly had actual notice of the lawsuit against Hernandez, and therefore was not prejudiced. Citing the Texas Supreme Court's decision in *National Union Fire Insurance Co. of Pittsburgh, PA v. Crocker*, 246 S.W.3d 603 (Tex. 2008), the Austin Court of Appeals found that "an insurer is not required *sua sponte* to defend its insured when the insured has not informed the insurer of the lawsuit or asked the insurer for representation". The court concluded that because Hernandez never notified Farmers of the lawsuit or requested representation, and because Egly obtained a default judgment that it sought to enforce against Farmers, Farmers has established that it was prejudiced by this lack of notice as a matter of law. Accordingly, the trial court's final summary judgment in favor

of Farmers was affirmed.