

THOUGHT LEADERSHIP

News

FEDERAL JUDGE ENFORCES APPRAISAL PROVISION AND GRANTS INSURER'S MOTION TO ABATE

Newsbrief

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Last week, Judge Nancy F. Atlas of the Southern District of Texas issued the latest opinion in a growing body of law enforcing insurance policy appraisal provisions. In *Debesingh v. Geovera Specialty Ins. Co.*, No. 4:18-CV-02316, 2018 WL 4810629 (S.D. Tex. Oct. 4, 2018), the insured purchased a homeowners insurance policy from GeoVera Specialty Insurance Company to cover certain risks to her residence. The Policy "CONDITIONS" contained an appraisal provision, which states among other things, that "If there is an appraisal: a. You and we agree that any suit for or involving a disagreement in the amount of loss claimed under this policy shall be abated on the demand for appraisal by either you or us until after an appraisal award is issued in accord with this Condition."

On April 27, 2018, the insured sued GeoVera in Texas state court alleging that GeoVera underpaid her insurance claim for damage to her residence resulting from Hurricane Harvey. She alleged breach of the Policy and violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act. GeoVera timely removed the case to federal court based on diversity jurisdiction. GeoVera then sent the insured a written demand for appraisal. After demanding appraisal, GeoVera filed a motion seeking abatement based on the Policy's appraisal provision and on other grounds.

Judge Atlas began her analysis by noting the key question for courts is whether abatement will aid judicial efficiency and economy. Judge Atlas found that enforcing the unambiguous policy provision "as written" requires abatement. Further, even if the Policy lacked this abatement requirement, the Court would conclude that judicial economy is best served by abatement of the suit. The court granted the motion to abate and ordered the suit to be abated, stayed and administratively closed until after an appraisal award is issued in accord with the parties' insurance Policy.