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News

TEXAS APPELLATE COURT ADDRESSES CONCLUSORY EXPERT REPORTS AND SEGREGATION OF STORM DAMAGES IN AFFIRMING INSURER/ADJUSTER SUMMARY JUDGMENT

Newsbrief

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Recently, the Texas Court of Appeals in Fort Worth addressed the topics of conclusory expert reports and segregation of damages in evaluating a first-party insurance action in *Richard Seim and Linda Seim v. Allstate Texas Lloyds and Lisa Scott*, No. 02-16-00050-CV, 2018 WL 5832106 (Tex. App.—Fort Worth, Nov. 8, 2018). The underlying suit related to Allstate's denial of the Seims' claim for storm damage to their home. The trial court ultimately granted Allstate and Scott's motion for summary judgment, and the Seims appealed up to the Texas Supreme Court. The Texas Supreme Court remanded the case and the Fort Worth court was tasked with determining—based on issues not previously addressed—whether the trial court was correct in granting Allstate and Scott's summary judgment. The issues in the summary judgment were twofold: (1) no evidence existed that the damage claimed was solely attributable to an August 2013 storm and not due to other causes (including previous storms); and (2) no evidence existed segregating the damage to the home sustained in the August 2013 storm as opposed to damage sustained by uncovered perils including previous storms.

The court began by recounting the procedural history of the Seims' suit: the original claim was for damage to the home sustained in an August 2013 storm. Allstate sent Scott, an adjuster, to inspect the damage and Scott concluded that, although the home had interior water damage, there was no evidence of wind or hail damage to the roof. Because the Seims' policy only provided coverage for interior water damage if there was an opening in the roof caused by wind or hail, Allstate denied the claim.

The Seims filed suit and amended their pleadings three times with a wide variety of causes of action and factual assertions. Initially, the Seims complained of Allstate's handling of their initial claim for damage sustained from the August 2013 storm. The Seims then amended their petition, complaining of Allstate's handling of a different claim for damage sustained in a storm in April 2007. None of the amended claims were predicated on the claims relating to the August 2013 storm. The Seims then amended their petition again, this time adding Scott as defendant, and also complained of the April 2007 storm handling. Additionally, the second amended petition complained of Allstate's handling of two other claims, one for damage from a storm in April 2008 and the other for damage from a May 2012 storm. Again, none of additional claims were predicated on the claims relating to the August 2013 storm.

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Allstate and Scott filed various motions for summary judgment and the Seims amended their petition for a third time, this time complaining exclusively of the handling of the August 2013 storm and deleting the claims stemming from the three other storms. They explained that they had made all of the repairs relating to the first three storms and had no water intrusion in the twelve months prior to the August 2013 storm. Allstate and Scott then filed a no evidence and traditional motion for summary judgment as to the claims in the Seims' third amended petition which the trial court granted and the Seims appealed.

Among the two remanded issues, the first centered on the report by the Seims' expert, Neil Hall and the statements made therein. Hall issued a report based on a July 2014 inspection concluding "it is difficult to determine what part and how much of the roof assembly and radiant barrier were damaged...[h]owever, clearly some of the damage described by Mrs. Seim occurred prior to the August 13, 2013 date of loss." Hall further commented that the insurer did not properly investigate and identify the damage. He then issued a supplemental report prepared on November 24, 2016—when the Seims amended their complaint for the third time to remove all claims with the exception of those related to the August 2013 storm. In the supplemental report, Hall changed his opinion, indicating that the damage observed was solely from the August 2013 storm and omitted important facts from his previous report including his determination that some of the damage occurred from previous storm events. The supplemental report further concluded that the interior damage observed was from the August 2013 storm, but offered no explanation of how it happened from a covered peril (without roof damage). Based on these statements, the court concluded that the report and the supplement were merely "bare, baseless (and contradictory) opinions that fail to link conclusions to the facts" and the Seims provided no evidence that the damage was caused by or solely attributable to a covered peril.

The second summary judgment issue (alternatively) centered on the segregation of damages between the claimed storms. At the outset, the court concluded that the doctrine of concurrent causation was triggered. However, the Seims failed to provide any evidence segregating the damage attributable to the 2013 storm with that sustained in prior storms or other uncovered perils. Specifically, the court found "there is no evidence that the Seims' roof was visibly damaged after the August 2013 storm in a way that it was not before." Although Mrs. Seims commented that she "noticed new leaks" after the August 2013 storm, the court concluded that a report of new leaks did not establish new damage. Accordingly, court upheld the trial court's granting of summary judgment to Allstate and Scott finding the breach of contract claims failed on no-evidence grounds, and as a result, summary judgment on the extra-contractual claims was also proper.

Editor's Notes: Prior to remand, the Texas Supreme Court addressed the Seims' appellate points as to Allstate's objection to the Seims' summary judgment evidence as well as Allstate's issue preservation. The Court concluded that, because Allstate failed to obtain a ruling from the trial court on certain objections to the Seims' affidavits, the lower courts erred in failing to rule on the objections as they relate to form versus substantive deficiencies. The court therefore remanded the case back to the appellate court for consideration—giving rise to the foregoing decision.