

THOUGHT LEADERSHIP

News

FEDERAL JUDGE ENFORCES PROMPT NOTICE AND CONSENT TO SETTLE CONDITIONS, CLARIFIES ROLE OF INSURED'S AGENT IN NOTIFICATION PROCESS

Newsbrief

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A Houston federal judge recently adopted a magistrate's recommendation, strictly enforcing conditions in a liability policy requiring prompt notice and consent to settle, where the insured settled a claim and reported the claim to the insurer over a year later. *Bobwhite Rentals, LLC v. National Liability & Fire Ins. Co.*, No. 4:18-CV-01330, (S. D. Tex, March 12, 2019) (slip op.) involved an oil tank fire which resulted in a claim against Bobwhite. Bobwhite notified its insurance agent of the claim the day after the loss, but the agent did not deliver notice to the insurer until a year later. Meanwhile, having not received any acknowledgment of the claim from the insurer, Bobwhite settled the claim for \$50,000 about 60 days after the loss and before any suit was filed against it. Bobwhite later sued the insurer for reimbursement of the \$50,000 settlement amount.

The court granted early summary judgment in favor of the carrier, relying on *Motiva Enterprises, LLC v. St. Paul Fire & Marine Ins. Co.*, 445 F.3d 381 (5th Cir. 2006) for the proposition that when the insured settles the claim before giving notice to the insurer, the violation of both the prompt notice clause and the voluntary payment clause creates prejudice as a matter of law, and the insurer is not required to make a specific factual showing of prejudice. The court also breathed new life into some older case law holding that the retail insurance agent is the legal agent of the insured and not the insurer, and Bobwhite's notice of the claim to its own agent the day after the loss was not notice to the insurer or the insurer's broker.

Editor's note: MDJW had the honor and privilege of representing National Liability and Fire Insurance Company in this suit. Congratulations to Barrie Beer, Amber Dunten, and our good client for this win, which makes a significant contribution to Texas jurisprudence on the role of insurance intermediaries when giving notice of claims.