

THOUGHT LEADERSHIP

News

BEAUMONT APPEALS COURT REJECTS MANDAMUS REQUEST IN APPRAISAL DISPUTE

Newsbrief

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A panel for the Court of Appeals in Beaumont recently denied a petition for mandamus filed by Mountain Valley Indemnity Company (“Mountain Valley”) and Prostar Adjusting (“Prostar”) contending the trial court abused its discretion by granting the insured’s motion to quash depositions on written questions and motion for a protective order. *In re Mountain Valley Indemnity Co. and Prostar Adjusting*, No. 09-20-00156-CV, 2020 WL 5666569 (Tex. App.—Beaumont Sept. 24, 2020).

In late 2017, a pipe burst in the attic of the insured’s home and caused damage to his residence and personal property. He made a claim with Mountain Valley, who hired Prostar to investigate the claim. For over two years, the parties disagreed over the reasonable value of the damages caused by the water that damaged the insured’s home.

The insured invoked the appraisal process in the policy and requested that the trial court appoint an umpire based on such provisions. In March 2020, the umpire issued a ruling appraising the losses at \$225,302. The award made clear that it did not account for any applicable deductibles or whether the policy covered the appraised loss.

Soon after, Mountain Valley served discovery requests to the insured and notified him that they intended to take deposition by written questions of nonparties they claimed had knowledge of the repairs, damages, delays, and renovations performed on the insured’s home. In response, the insured moved to quash the deposition notices and sought protection from discovery requests seeking information related to the valuation of any losses valued in the appraisal process—arguing that Mountain Valley could no longer dispute the value set by the umpire per the appraisal provision in the policy. In response, Mountain Valley and Prostar argued that there were substantial coverage issues and the discovery was relevant to the affirmative defense they planned to advance in a forthcoming motion to set aside the appraisal award due to fraud, mistake, or accident.

The trial court found Mountain Valley and Prostar did not have the right to challenge the validity of the appraisal award without a pleading raising affirmative defense to avoid the legal effect of the award. Because Mountain Valley and Prostar did not include their answers in the appellate record, the appellate court held it could not tell if the trial court abused its discretion. It therefore denied the petition and remanded the case to the trial court, stating “we are confident the trial court will permit Mountain Valley and Prostar to pursue more discovery on claims raised by the pleadings should they amend their pleadings and raise new defenses before serving [the insured] with more discovery.