

THOUGHT LEADERSHIP

News

## HARRIS COUNTY JURY RETURNS CARRIER VERDICT IN BAD FAITH SIU COMMERCIAL ROBBERY TRIAL

Newsbrief

31 OCT 2022

Late Wednesday evening, after 90 minutes of deliberation, a Houston jury in *Wen Wireless v. AmGUARD Insurance Company* returned a defense verdict for AmGUARD. The jury answered “no” to the breach of contract question, never reaching the remaining statutory bad faith and attorney fee questions which were predicated on a “yes” answer to the contractual liability question.

On October 18, 2017, Wen Wireless was robbed by an armed gunman. After forcing an employee to open the safes and taking items from them, the robber and an accomplice fled in a vehicle. Police were called and a chase ensued when the getaway vehicle was spotted. Less than thirty minutes after the 911 call, the driver was apprehended in the getaway vehicle with the stolen items and drugs. The robber had jumped out during the chase but was apprehended the next day after carjacking another victim and leading police on another chase.

Wen Wireless filed an insurance claim after the incident for loss to its business personal property. AmGUARD timely and appropriately acknowledged the claim and requested items it needed to investigate the claim. Wen Wireless supplied one document and did not supply the remainder of the requested documentation. Instead, Wen Wireless, represented by Eric Dick of the Dick Law Firm, sued AmGUARD for breach of contract and various other extra-contractual claims in an expedited action. AmGUARD answered the suit by asserting, among other things, the policy’s condition precedent of duty to cooperate.

Wen Wireless then moved to compel appraisal and abate the lawsuit, which AmGUARD contested. The court ordered appraisal to take place and abated the lawsuit, but the court ordered appraisal to be completed within thirty days. When appraisal was still not completed nine months later, the court lifted the abatement order, allowing the lawsuit to continue. The appraisal finally completed two months later.

After discovery, AmGUARD asserted the policy’s condition of concealment, misrepresentation, or fraud as an additional defense to the claim. At the pre-trial hearing, the trial court granted AmGUARD’s motion to set the order of trial proceedings, which allowed AmGUARD to open and close the evidence.

The trial started on the five-year anniversary of the robbery, October 18, 2022. At trial, the court allowed the appraisal award and testimony from both appraisers to come into evidence. The jury also heard testimony from one of Wen Wireless’ owners. The jury also heard from the primary investigator and supervisor who investigated the robbery.

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Our firm was privileged to represent AmGUARD in this matter with Chris Martin and Jamie Cooper representing AmGUARD at trial.