

THOUGHT LEADERSHIP

News

APPEALS COURT UPHOLDS DISMISSAL OF INSURED'S LAWSUIT AGAINST INSURER IN COVERAGE DISPUTE

Newsbrief

07 JUN 2023

An appeals court in San Antonio recently ruled in favor of an insurer and upheld the dismissal of an insured's claims in a coverage dispute. *Jones v. Allstate Vehicle and Property Ins. Co.*, NO. 04-22-00010-CV, 2023 WL 3733917 (Tex. App. —San Antonio May 31, 2023) involved claims for breach of contract and unfair settlement practices against an insurer when the insurer concluded the insured's roof did not sustain covered damage, and it refused to pay for the roof's replacement.

After a hailstorm hit his property, the insured filed a property damage claim with his insurer. The insurer then inspected the house and issued an estimate for the damages it considered covered under the policy. The insured, who was also an attorney, requested a second inspection. The insurer again inspected the property and issued an additional payment. The insured, dissatisfied with the insurer's position, filed suit against the insurer for breach of contract and violations of the Texas Insurance Code.

During the jury trial, the insured and his wife testified that the storm was severe, and the hail was large, but they did not observe water leakage in their roof after the storm. The insured's expert adjuster further opined that the storm damaged the roof and parts of the house and that it would cost over \$45,000 to repair the property. The insured also only produced one photograph of the damage to his house.

The jury returned a verdict in favor of the insurer, a take-nothing judgment was entered, and the insured appealed—claiming that he had conclusively established his breach of contract claim and that the jury's rejection of his claims was factually insufficient.

Because the jury charge did not define the term “loss,” the court applied its commonly understood meaning: “the state or fact of being destroyed or placed beyond recovery.” With that in mind, the court reviewed the record. Although the court held that the record conclusively established that a storm hit the insured's home in April 2016, there was no evidence that the insured's roof and siding was “destroyed or placed beyond recovery” solely by the storm in excess of the insurer's damage estimate.

The Court further held that the insured's expert did not explain how the storm destroyed or placed the roof or siding beyond recovery and made conclusory statements that the entire roof and other items needed to be completely

APPEALS COURT UPHOLDS DISMISSAL OF INSURED'S LAWSUIT AGAINST INSURER IN
COVERAGE DISPUTE

replaced. Consequently, the Court held that the insured failed to conclusively establish the elements for breach of contract and the elements of his bad faith claim. As the court noted, "the jury may have determined that [the insurer's] second inspection and supplemental payment constituted a 'reasonable investigation.'" As such, the Court upheld the jury's verdict and the trial court's judgment.