SANDBERG PHOENIX

BAD FAITH BLOG

Insurer Not Liable For Bad Faith Where No Payment Was Obligated Under The Terms Of The Insurance Contract

AUTHOR: SANDBERG PHOENIX

Summary: In Davis, the Texas Court of Appeals affirmed that no breach occurred when the insurer denied a claim that the jury ultimately found did not exceed the insured's deductible. Without a breach, no "extra-contractual claims" could exist, including for bad faith.

Davis v National Lloyds Insurance Company

Davis, the insured, purchased a building in Houston. He opened two businesses in the building, and also resided there. The 1960s structure had a mostly "modified bitumen" roof, which was composed of an asphalt and rubber material rolled out across the flat area. The exact age of the roof was unknown, but Davis had never replaced it after purchasing the property in 1994.

National Lloyds Insurance Company ("Lloyds") insured the property against wind, fire, and hail. The policy did not cover rain damage "unless the building or structure first sustains wind or hail damage to its roof or walls through which the rain…enters." The policy provided that the insurer "will determine the value of the Covered Property in the event of loss or damage…[a]t actual cash value as of the time of loss or damage." Additional optional coverages were offered, including replacement cost value coverage, but Davis declined all these options. The policy had a $3,700 deductible for building damage, and a $2,500 deductible for damage to the building's contents.

Hurricane Rita struck Houston in 2005, and Davis filed a claim after noticing roof leaks following the storm. Lloyds denied the claim, so Davis hired a contractor to patch the roof. The leaks stopped until 2008, when Hurricane Ike struck. The roof again began leaking, along with some additional, minor damage to a shingled area on the building and an AC unit. An adjuster from Lloyds valued the damage at $1,825, well below the $3,700 deductible, resulting in no payment on the claim. In 2010, a public adjuster made another inspection under unclear circumstances, ultimately deciding the damage was both a result of Hurricane Ike and sufficiently more than the deductible.

Davis filed suit, alleging several claims, including a breach of contract, violation of the Texas Insurance Code, and breach of the common-law duty of good faith and fair dealings. At trial, experts disagreed about the cause of damage to the roof. The roof was old; evidence suggested it first experienced problems with leaks in 1997. Additionally, the experts disagreed as to the cost of repairs, with Davis' expert estimating the cost at $108,038.75. Lloyds' experts argued this price was inaccurate, as it failed to differentiate covered damage from non-covered damage and used prices well above industry standards. The jury returned a verdict for Davis, but with actual cash-value damages of $0; replacement damages of $100,000; damages incurred attempting to repair the property of $17,200; exemplary damages for the insured's bad faith denial of $150,000; and attorney's fees of $75,000. The trial court granted Lloyds' motion for judgment notwithstanding the verdict as to all findings other than the actual cash value, as this was the only amount covered by the policy. If the jury found there was no such value, the other claims must fail. Davis appealed.

The court of appeals affirmed holding the insurance contract clearly covered only actual cash value of the property damage, and the jury had determined that value was at or below the deductible by returning a finding of $0. While the roof's condition as a whole was poor and in need of replacement, only damage done by hail and wind were covered by the policy. Evidence had been produced showing the damage caused by wind and hail failed to meet the deductible amount, and the jury's findings showed they determined this to be so. The court of appeals found the trial court was correct in determining the policy did not require Lloyds to act, and thus, no breach occurred. The fact that the jury found replacement damages was irrelevant because such damages were not covered by the plain language of the contract.

The trial court also properly ruled Davis' bad faith claim could not stand. "When, as here, it has been determined that no payment was obligated under the terms of the insurance contract, then the insurer cannot be liable for bad faith." Furthermore, the insurer had not misrepresented a material fact in denying the claim, as Lloyds had found damage done by Hurricane Ike, but that damage was less than the deductible. Lloyd's claim denial was not wrongful. The Texas Insurance Code creates a cause of action when an insurer fails to settle once "liability has become reasonably clear." Though Lloyds' liability had become "reasonably clear," it had no duty to settle because it owed nothing under the insurance contract; the value of the covered loss came within the deductible.

The Court also determined the conflicting jury findings were not "fatal to entry of judgment." "Jury findings can conflict or be inconsistent," but they are only fatal if they "create a conflict about the same material fact." The jury's inconsistencies did not relate to the same material fact, they had found "zero actual cash value damages," and upon that finding no further facts were relevant. That fact, taken together with the law applied by the trial court, made the judgment entered fully appropriate.

By Katrina Smeltzer & Robert Bruce

Katrina Smeltzer 300

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