

Judge Finds Insurer Had 'Reasonable Basis' For Denying Further Payment

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A commercial property insurer's denial of further payment of an insurance claim arising from Hurricane Ike was based upon a correct application of the policy to the appraisal award, a Texas federal judge held October 28, granting summary judgment in favor of the insurer on the insured's claims for breach of contract, bad faith and violation of the Texas Insurance Code (*Brelian Inc. v. Liberty Mutual Fire Ins. Co.*, No. H-09-1383, S.D. Texas, Houston Div.). Zelle Hofmann attorneys Brad Brewer, Shannon O'Malley and Kristin Cummings represent Liberty Mutual Fire Insurance Co. The ruling was reported in Mealey's Litigation Reporter.

In April 2009, Brelian Inc. sued its commercial property insurer, Liberty Mutual Fire Insurance Co., in the 157th Judicial District of Harris County, Texas, for breach of contract and bad faith stemming from the insurer's adjustment of Brelian's claims resulting from Hurricane Ike damage.

Liberty Mutual removed the case to the U.S. District Court for the Southern District of Texas, where Brelian added a claim against the insurer for violation of the Texas Insurance Code.

The insurer moved to compel appraisal. In November 2009, the parties settled all of Brelian's claims except the ones concerning its property's roof damage.

Liberty Mutual moved for summary judgment, arguing that its policy applies to the appraisal award such that it has overpaid Brelian and, therefore, now owes nothing.

No Breach

Judge Vanessa D. Gilmore found that Liberty Mutual did not breach its contract with Brelian.

"Based on the Parties' agreements, the liability admitted by Defendant, and this Court's findings, Defendant owes Plaintiff for the following costs in the

appraisal award: the portion of *Cost to Comply with Building Code corresponding to roof demolition* (\$17,325.00), the Debris Removal of Repair Cost Items (\$75,076.58), and the Actual Case Value of Repair Cost (\$172,895.18). The total owed is \$265,296.76. Based on the Parties' agreement, Defendant should be credited for a previous payment of \$279,290.70," the judge said.

The judge noted that "[t]he record is not sufficient to establish whether the disputed payments of \$49,235.35, and \$10,339.42 should be credited to Defendant as payments for roof repair and replacement."

"However, the previous payment of \$279,290.70 is \$13,993.94 greater than the \$265,296.76 total that the Court finds is owed under the policy. Accordingly, this Court finds that Defendant does not owe Plaintiff any further payments for the costs listed in the appraisal award. Defendant's denial of further payment to Plaintiff is correct under the terms of the insurance policy," she said.

No Bad Faith

The judge further found that Liberty Mutual did not act in bad faith.

"Here, Defendant acted promptly in sending Plaintiff a letter on February 15, 2010 informing Plaintiff that Plaintiff's insurance policy applied to the February 1, 2010 appraisal award such that Defendant did not owe any further payments to Plaintiff. Plaintiff has not alleged that, other than denying further payment to Plaintiff pursuant to the February 15 letter, Defendant has engaged in any other acts of bad faith. As this Court has already found, Defendant's denial of further payment was based upon a correct application of the insurance policy to the appraisal award. Defendant thus had a reasonable basis for denying payment," the judge said.

The judge also dismissed Brelian's claim that the insurer violated Section 541.060 of the Texas Insurance Code, as well as its claim for attorney fees.