

## **Summary Judgment Granted When Insured Fails to Show New Information Would be Found Via Further Investigation**

### ***Property Coverage Update***

June 14, 2011

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### ***U.S. District Court for the Western District of Oklahoma***

In *Lopez v. Farmers Insurance Company Inc., et al.*, 2011 WL 1807158 (W.D.Okla. 5/6/11), the U.S. District Court for the Western District of Oklahoma held that, where an insured alleges bad faith based on an "inadequate investigation" into the cause of the insured's alleged property damage, the insurer is entitled to summary judgment as a matter of law unless the insured can establish what new information would have been obtained through additional investigation.

In *Lopez*, Farmers issued the plaintiff a homeowner's policy that provided coverage for "accidental direct physical loss to property," but did not insure for loss consisting of, or caused directly or indirectly by "[w]ear and tear, marring, [or] deterioration." The plaintiff submitted a claim to Farmers in October 2009 for hail damage after he noticed water stains on an interior ceiling of his home. At the time, the plaintiff's roof was the original roof installed when the house was built in 1991. Two weeks after the October 2009 claim submission, Farmers sent a claim representative to inspect the plaintiff's home.

The claim representative's report noted "extreme wear/tear to the roofing surface, which is the original wood roof." The report went on to note, "Shingles do not have pock marks. . . . [s]ource of interior water damage is wear/tear to pipejack boots and to ridgecaps." As a result, Farmers prepared an estimate of \$415 to replace the property determined to be caused by hail. Farmers denied the plaintiff's request for a second inspection because the plaintiff's contractor was present during the inspection performed by Farmers' claims representative.

While the contractor retained by the plaintiff did not take any photographs of the plaintiff's roof or record the location of missing shingles, the contractor disagreed with Farmers and contended that the roof damage was caused by hail and/or wind damage, not "wear and tear." The contractor also stated that, because the roof was "very old," the roof was not a candidate for repair, and provided an estimate of approximately \$42,000 to replace the plaintiff's entire roof.

The plaintiff filed a breach of contract and bad faith action against Farmers in May 2010. Farmers moved for summary judgment on both counts. On the breach of contract question, the court found that a material fact dispute precluded summary judgment, as a jury would

have to determine whether the plaintiff's roof needed to be replaced because of wind and hail damage or because of severe deterioration.

However, the court granted Farmers' motion for summary judgment on the bad faith claim. The plaintiff alleged that Farmers did not handle the claim properly and, in support of its claim, relied on expert testimony from a licensed adjuster. The plaintiff's expert that contended Farmers' claim representative may have had "tunnel vision," and assumed the damage was due to wear and tear. Further, the plaintiff's expert criticized Farmers' refusal to do a reinspection with a different adjuster.

The court found this evidence insufficient to create an issue of fact precluding summary judgment for Farmers because, even if industry standards would require a different adjuster to reinspect the roof, the plaintiff provided no evidence that new information would have been obtained through a second look. The court noted that, "when a plaintiff alleges bad faith based on inadequate investigation, the insured must demonstrate that material facts were overlooked or that a more thorough investigation would have produced relevant information." As such, the court held that the plaintiff "has not shown that Farmers overlooked material fact or that a more thorough investigation would have resolved the discrepancy" in an otherwise legitimate coverage dispute.

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