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Insurance Adjuster Not Liable for Breach of Duties of Good Faith and Fair Dealing in Adjusting a Claim

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Trinity Baptist Church v. Brotherhood Mutual Insurance Services LLC,No. 113, 072 (Okla. Sup. Ct. Dec. 9, 2014)

Plaintiff church filed a claim with its property insurer for damage to its sanctuary due to a winter storm. The insurer hired defendant, an independent insurance adjuster, to investigate the claim. Pursuant to a limited assignment the adjuster was to collect documentation, personally inspect the loss, and provide a descriptive report if the loss was not covered. The adjuster was not to make coverage commitments itself. After a year-long adjustment process, the church sued both its insurer and the adjuster. The church claimed that the adjuster acted in bad faith and was negligent because it assigned an adjuster who was inadequately skilled in adjusting this type of commercial loss, allowed the adjuster to drag out the adjustment for more than a year and to "lowball" the church's loss, which it only increased when the church objected and hired its own third-party advisors. The church settled with the insurer, but the trial court granted summary judgment in favor of the adjuster on grounds that the adjuster owed no duty of good faith and fair dealing to the church that would subject it to liability for bad faith or for negligent adjustment of the claim. The Supreme Court of Oklahoma affirmed.

Questions Before the Court

Is an independent adjuster subject to the implied covenant of good faith and fair dealing even though it is not a party to the insurance contract?

No. The court held that the law in Oklahoma is that noninsurer defendants that are not parties to the agreement for insurance cannot be subject to an implied duty of good faith and fair dealing. The court also held that the special relationship exception did not apply. Merely performing some of the tasks of an insurance company in the claims-handling process was not sufficient to subject the adjuster to a duty of good faith and fair dealing. The court found that the adjuster here was not a plan administrator with primary control over benefit determinations and intermediate appeals and its compensation was not tied to premiums paid or in relation to an increase or decrease in losses. Any such special relationship had to arise between the adjuster and the insured and not the

insurer and the adjuster. The record showed that the adjuster did not step into the insurer's shoes for purposes of interacting with the church so that such a special relationship developed.

Does an independent adjuster owe a duty to the insured that would subject it to a claim of gross negligence for the manner in which it investigated and adjusted the insured's claim?

No. The court held, in what was an issue of first impression in Oklahoma, that an independent adjuster hired by an insurer to investigate a claim does not owe a duty to the insured to conduct a fair and reasonable investigation. The court commented that this was the majority view endorsed by the state courts that had considered this issue, as well as by several federal courts. Citing the federal court decision in *Wallace v. Allstate Insurance Co.*, 2102 WL 2060664 (W.D. Okla. 2012), the court held that the insurer contractually controls its adjuster's responsibilities and retains the ultimate power to deny coverage or pay a claim. Subjecting adjusters to potential tort liability from insureds would create conflicting loyalties with respect to the adjusters' contractual obligations given that insureds and their insurer often disagree on the extent of coverage or the amount of damages. Creating a separate duty on the part of the adjuster to the insured would thrust the adjuster into what could be an irreconcilable conflict between such duty and the adjuster's contractual duty to follow the instructions of its client, the insurer. The insurer's duty under the insurance policy is nondelegable and the insurer can be liable for breach of the duty of care due to the actions of its independent contractors or agents. It make little sense, according to the court, to hold that an adjuster has an independent duty, when the insurer itself is subject to liability for the adjuster's mishandling of claims and thus would allow for a potential double recovery.

What the Court's Decision Means For Practitioners

The Supreme Court of Oklahoma followed the majority view and declined to recognize that independent adjusters owe duties of care to the insured of good faith and fair dealing and to conduct a fair and reasonable investigation of the claim. However, courts in California, New York and South Dakota, have recently held that that independent adjusters can be subjected to liability based on a negligent misrepresentation theory where a special relationship exists and there is evidence of providing false information for a business purpose that results in physical harm. *See Bock v. Hanson*, 2014 WL 1315314 (Cal. App. 1 Dist. 2014).

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