

BAD FAITH BLOG

Louisiana appellate court finds insurer acted in bad faith when relying on report prepared by third-party claims administrator

AUTHOR: BEN WESSELSCHMIDT

CONTRIBUTOR: STEPHEN CARMAN

In a recent decision, *Dudenhefer v. Louisiana Citizens Property Insurance Corp.*, a Louisiana appellate court determined an insurer acted in bad faith after basing a coverage denial on the a report prepared by a third-party claims administrator.

The claim at issue in *Dudenhefer* arose from a first-party property coverage part to a homeowner's policy. The policy provided for hurricane coverage, and water damage resulting from wind damage, but not flood damage. After the insured's home was damaged in Hurricane Isaac, the carrier relied on the report of a field adjuster hired by a third-party administrator to determine damage was due to flooding, and no covered damages in excess of the deductible occurred. That report was later determined to contain incorrect assessments regarding flood water levels and contained no evaluation of the home's doors, windows, or roof condition. At trial, the insured presented expert testimony that wind caused the windows to fail, providing for entry points for covered wind-driven rain damage. The trial court found \$40,414 in excess of the deductible for covered property damage and awarded the insured statutory penalties for bad faith claims handling in the amount of \$52,812, and attorneys' fees in the amount of \$19,804.50.

The appellate court upheld the determination the carrier breached its contractual duty and acted in an arbitrary and capricious manner in denying his claim for such an extended period after repeatedly being presented with adequate proof of loss, and by failing to exhibit diligence in the claims process. It held the initial report relied upon by the carrier was "woefully undeveloped, inaccurate in some respects, and lacking in crucial details," which caused the insured additional damages in the form of loss of use, financial burdens, and the inconvenience of having to live in a storm damaged dwelling.

However, the method used by the trial court to calculate statutory damages was legally incorrect, because under Louisiana law, the amount of the penalty must be based on the insured's actual damages from the insurer's bad faith, not the amount owed under the contract of insurance. The appellate court reduced the award of statutory fees to \$25,000, and attorneys' fees to \$15,976.50.

Click [here](#) for the court's decision in *Warren Dudenhefer v. Louisiana Citizens Property Insurance Corporation, et al.*