

BAD FAITH BLOG

Failure To Timely Decide Claim Leads to Large Interest Penalty Under Texas Prompt Payment Statute When Insurer Knew That The Insured Had In Fact Suffered A Loss

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The insured, Weiser-Brown, had a loss of control oil well insurance policy with St. Paul. Under this policy, St. Paul is required to pay if insured suffers a subsurface loss of control on one of its oil wells. Weiser-Brown made a claim under the policy in March 2009 and St. Paul's claims representative requested seventeen categories of information from Weiser-Brown. Within one month Weiser-Brown sent some but not all of the requested documentation to St. Paul. On September 29, 2009, St. Paul informed the insured that its independent expert had reached the preliminary conclusion that there was not a subsurface loss of control and additional information was requested from the insured, who supplied most key documents by early November. By the following February, St. Paul confirmed its earlier preliminary conclusion that there was no loss of control. Thereafter, Weiser-Brown sued St. Paul for breach of the insurance agreement and for bad faith in violation of Texas Insurance Code § 541. The insured also claimed that St. Paul was liable under the Prompt Payment statute for 18% interest on damages awarded.

Weiser-Brown Operating Company v. St. Paul Surplus Lion's

The trial court took the bad faith question from the jury and thereafter, the jury found in favor of the insured on the breach of contract claim for \$2.29M. The Court then, by agreement of the parties, decided the Prompt Payment issue. Under that statute, the insurer has 15 days after receiving "all items, statements and forms required by the insurer to secure final proof of loss." The Court found that St. Paul had violated the statute even though the insured had not provided all the requested information.

St. Paul did not appeal the jury verdict against it that had found that there was a subsurface loss of control, but it did appeal the finding of the violation of the prompt payment statute. The appellate court examined a series of cases which talked about the issue of what must be provided to the insurer by the insured. The Court ruled that the insurer must be provided enough information by the insured to show that it "in fact suffered a loss". The insured need not provide all the information necessary to show the extent of the loss. The Court, after reviewing all these cases decided that the information required by the insurer to secure final proof of loss under the statute depends on the facts and circumstances of each case. The Court found that based on the documents provided by the insured, St. Paul's retained expert had concluded in September 2009 that there had been no covered event and accordingly, the insured had sufficiently complied with the document request. None of the information that was missing was information that was determinative of St. Paul's position refusing the claim. Finally, as to the cross appeal by the insured as to trial court's refusal to let the jury decide its bad faith claim, the Court ruled that based on evidence presented that there was a *bona fide* coverage dispute between the insurer and insured and accordingly, an absence of bad faith on the part of St. Paul in denying coverage.

The Prompt Pay damages were over \$1.23M.

By John S. Sandberg

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