

BAD FAITH BLOG

# Adjustment of Claims Did Not Cause Mental Anguish: Fifth Circuit Affirms District Court in Hurricane Katrina Claim

AUTHOR: JOHN SANDBERG

Summary: Fifth Circuit finds there was no evidence to support insureds' claim for extra-contractual statutory penalties based on mental anguish and lost wages. Also, Fifth Circuit finds insurer acted in good faith and timely in adjusting insureds' contents damage claim.

*French v. Allstate Indemnity, Co.* 2011WL1228281

Homeowner insureds French and Sutter sued Allstate to recover additional insurance payments for damages to their home resulting from Hurricane Katrina. The insureds also sought statutory penalties and costs under Louisiana law. After a bench trial, the District Court awarded the insureds additional insurance payments as well as statutory penalties. This blog entry will only discuss the extra contractual damages awarded to the insureds.

The insured's sought statutory damages for mental anguish and lost wages. However, the District Court concluded the insureds had not presented sufficient evidence to recover such damages. Under the Louisiana statute, insurers have a duty of good faith and fair dealing which includes an obligation to adjust claims fairly and promptly. While general damages for mental anguish may be awarded under the Louisiana statute, a plaintiff is not entitled to such damages absent showing sufficient proof of mental anguish. While the insureds testified they experienced emotional and physical stress since Hurricane Katrina, they presented little evidence that Allstate's adjustment of their claim was the cause of their stress. Likewise, one of the insureds testified he had been unemployed since Hurricane Katrina, but stated his job loss was directly attributable to Hurricane Katrina's physical destruction in New Orleans. Therefore, the Fifth Circuit concluded that the District Court did not err in denying statutory damages for lost wages and mental anguish.

Also under a Louisiana statute, insurers are required to "pay the amount of any claim due any insured within 30 days after receipt of satisfactory proofs of loss from the insured." An insurer's failure to pay "within 30 days after receipt of such satisfactory written proof and demand therefor . . . when such failure is found to be arbitrary, capricious, or without probable cause, shall subject the insured to a penalty." LSA-R.S. Section 22:658.

On appeal, Allstate did not dispute liability under the statute because it clearly failed to pay the full amount of “any claim due” within 30 days after receiving proofs of loss from the insureds. Allstate, however, did dispute the District Court’s assessment of penalties. Insureds argued the newer version of the statute should be applied and Allstate should be assessed a penalty of 50 percent damages on the amount found to be due. Allstate argued the District Court correctly applied the earlier version of the statute by assessing 25 percent of the damages on the amounts due; however, Allstate argued the Court incorrectly calculated the penalty due.

The Fifth Circuit agreed the earlier version of the statute should be applied because the insured’s claim for penalties under the statute first arose in late 2005, which was prior to the amendment of the statute in 2006. Allstate had received satisfactory written proof of the insureds’ property damage claim by late October 2005 when Allstate’s adjuster completed his initial estimate. Thus, this was when the insureds’ claim for statutory penalties first arose. The Fifth Circuit found that despite the insureds’ contention, the claim did not arise when they filed their lawsuit.

The Fifth Circuit also found that the penalty was to be assessed on the “amount found to be due,” which was the full policy limit not previously paid. The failure of the insurer to pay the undisputed portion of the claim within 30 days subjected the insured to penalties on the entire claim. Allstate had made partial payment within 30 days of its adjuster’s estimate on the insureds’ property damage claim. Therefore, the Court was obligated to subtract from “the amount found to be due” the partial amount paid within 30 days. After subtraction of the partial amount paid within 30 days, the penalty was 25 percent of the balance that was unpaid within 30 days from the adjuster’s estimate.

The insureds also argued that Allstate untimely paid and untimely initiated loss adjustment on their claim for contents of their home and they were, therefore, entitled to mandatory penalties under Louisiana statute. The District Court concluded that Allstate handled the contents claim in good faith and declined penalties on the contents claim and the Fifth Circuit affirmed.

The insureds’ claimed general damages to contents in their initial loss report to Allstate, they did not submit an inventory on their damaged contents—a pre-requisite to recovery—until February 2008, after litigation had commenced. The insureds requested approximately \$89,000 on their contents claim. Because the insureds did not make clear the cause of damage of each inventoried item, Allstate requested additional information from the insureds on their claim. The insureds retained an expert to assist with their contents claim, and with the expert’s assistance, the insured submitted a more detailed contents report to Allstate. Allstate then deposed the insureds’ expert a month after receiving her report to seek additional information on the insureds’ loss. Allstate also deposed the insureds a few months later. A few weeks after they were deposed, Allstate paid the insureds’ contents claim in full.

The Fifth Circuit found Allstate did not receive a satisfactory proof of loss on the insureds' contents claim until at least after the insureds were deposed. The insureds at all times bore the burden of establishing the contents damage and their value and that wind was the common cause of damage. In addition, the insureds had the burden of proving when Allstate received satisfactory proof of loss. The insureds failed to sufficiently demonstrate that Allstate received satisfactory proof of loss prior to the insured being deposed. Nor did the insured deduce any evidence to support their assertion that Allstate handled their contents claim in an arbitrary or capricious manner.

Allstate was not found liable for extra-contractual penalties because the insured did not meet their burden of proof. Moreover, Allstate had good reason to continue to investigate the contents claim and timely paid the full amount of the contents claim after its investigation was concluded. Therefore, insurers in first party property claims are not necessarily capricious or arbitrary in fully investigating claims even though the investigation may seem to take too long from the standpoint of the insured and results in full payment of the original claim.