

Mental Anguish, Emotional Distress, and Punitive Damages Denied, But a Second Chance at Contract Damages Allowed

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Summary: Hurricane Katrina damaged the Hoover's house and cabana. The usual question was whether the damage resulted from a covered wind loss or an excluded storm surge. The trial court's directed verdict on part of the contract damages was reversed, but the directed verdicts disallowing the mental anguish, emotional distress, and punitive damages claims were affirmed. In addition, the plaintiffs' expert's roof structure testimony was allowed under Mississippi's *Daubert* standard.

Hoover v. United Services Automobile Association 125 So.3d 636

Dr. Hoover and his wife sought nearly \$241,000 in contract damages for Hurricane Katrina damages to their home and cabana. They also sought damages for their mental anguish, emotional distress and punitive damages on their tortious bad faith breach of contract count. A key issue was whether the property damage was caused by Katrina's winds or its storm surge. USAA had paid for wind damaged shingles, but the trial court determined that the insureds' engineering expert met Mississippi's *Daubert* standards and allowed him to testify regarding claimed damages to the roof structure itself. The trial judge also ruled that USAA had met its burden demonstrating that most of plaintiffs' loss was excluded water damage, while also granting directed verdicts for USAA on plaintiffs' mental anguish, emotional distress, and punitive damages claims.

The majority and dissenting Mississippi Supreme Court justices debated the burden of proof requirements on USAA's water damage exclusion and whether that issue should have been submitted to the jury. The majority held that was a jury issue and remanded for a trial on that issue alone. The Court also rejected USAA's cross appeal. USAA contended that the trial court wrongly ruled the plaintiffs' engineering expert's testimony satisfied the Mississippi *Daubert* standard and allowed him to testify both about damage to the roof structure and the cost of replacing that roof structure. Accordingly, the awards for \$80,000 in compensatory damages to repair the damaged roof and slightly more than \$1,000 for additional living expenses were affirmed.

Notwithstanding that loss, the directed verdicts in favor of USAA on the mental anguish and emotional distress claims were affirmed. The Mississippi standard is whether an insurer performed a prompt and adequate investigation and made a “reasonable, good faith decision based on that investigation.” Any insurer failing to perform that duty was liable for extra contractual damages. (Par. 16) The Court noted that whenever an insurance company has “an arguable, good faith basis for denial of a claim, that awards for extra contractual damages, including ‘awards for emotional distress and [mental anguish]’ are not warranted.” Furthermore, plaintiffs bear “a heavy burden” when trying to prove that the denial of an insurance claim was in bad faith. (Par. 16)

The Court found that the Hoovers’ argument that USAA failed to present any evidence that its investigation examined whether the losses were excluded from coverage was refuted by the evidence. USAA’s claims representative inspected the Hoovers’ home and prepared a report setting forth detailed findings regarding the nature and extent of the loss. The next day an engineering firm was hired to inspect the home and that expert engineering firm was asked to “inspect and offer a professional opinion regarding causation, i.e., wind vs. flood surge.” Furthermore, if wind contributed to the damage, the engineering firm was asked to “identify the related building damage.” Shortly thereafter, that firm’s engineer conducted his inspection and prepared and submitted his detailed report to USAA. In addition, after Dr. Hoover presented additional information to USAA, it consulted with its engineering firm regarding those issues.

Accordingly, the Supreme Court of Mississippi concluded that the record supported the trial court’s finding “that USAA had an ‘arguable basis’ for denying a portion of the Hoovers’ damages. USAA relied on the investigation of its adjusters and the reports of [its engineering firm] in denying certain aspects of the claim which were deemed excluded.” For those reasons the trial court properly directed a verdict on those issues.

Because there was an arguable basis for denying a portion of the claim, the Court had little trouble affirming the directed verdict on the punitive damages issue. In Mississippi the insured had to show the insurance company “denied the claim (1) without an arguable or legitimate basis, either in fact or law, and (2) with malice or gross negligence in disregard of the insured’s rights.” Having already found an arguable basis on the extra contractual damages claims, the Court readily concluded that the first prong of the punitive damages test could not be met. Therefore, the trial court properly granted a directed verdict on the punitive damages issue.

Thorough and complete investigations supported by expert opinions are time consuming and costly. That is particularly true in CAT events, such as Hurricane Katrina. Nevertheless, such investigations are required for an insurance company to demonstrate good faith toward its insured. That good faith investigation by USAA in the *Hoover* case, prevented the assessment of extra contractual and punitive damages against USAA.

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