

PUBLICATION

Fifth Circuit Affirms Texas Court Requiring Insurance Company to Pay Oil Company's Loss of Control Claims

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In an opinion filed on September 16, 2015, the U.S. Court of Appeals for the Fifth Circuit affirmed that St. Paul Lines Insurance Co. must cover Weiser-Brown Operating Company's \$2.3 million in damages associated with a blow-out of a gas well and pay another \$1.2 million for violating the Texas Prompt Payment Claims Statute in failing to promptly pay the claims.

The well blow-out occurred in August 2008. Weiser-Brown attempted to redrill around the affected area to restore the well, but was unable to restore control and ended up abandoning the well. Weiser-Brown had an "out-of-control" policy with St. Paul that covered certain costs associated with attempting to restore control of an out-of-control well. The oil company notified St. Paul of the loss seven months after the claim was made.

St. Paul requested 17 categories of information and documentation. Within a month, Weiser-Brown was able to supply most but not all documentation requested.

Subsequently, in September 2009, St. Paul informed the oil company that St. Paul's independent expert reached a preliminary conclusion that "there was not a subsurface loss of control" within the meaning of the St. Paul insurance policy. St. Paul asked Weiser-Brown for additional information, and the oil company continued to send documentation. In February 2010, St. Paul informed the oil company that its expert had not changed his conclusion after reviewing the additional information. The insurance company asked Weiser-Brown if it had any additional information in support of the claim. After the parties corresponded back and forth a few times, with the oil company making no progress, it filed suit in July 2010 in U.S. District Court in Houston against St. Paul for breach of agreement and bad faith.

After a trial in September 2012, the jury disagreed with St. Paul's position and found St. Paul liable. It also found that by November 2009, Weiser had complied with most, but not all of the requests for information by St. Paul's expert, and that the insurance company should have paid the claim within 15 days of November 6, 2009, in compliance with the Texas Prompt-Payment Statute. That statute provides a series of claim-handling and claim-payment deadlines for insurers. In upholding the lower court ruling, the appeals court stated that the few additional items of information that were not supplied "did not operate to nullify application" of the Texas Prompt Payment Statute.

The appeals court affirmed the U.S. District Court's subsequent decision that insufficient evidence existed to support the bad faith claim against the insurer.