

Insurer Fails to Dismiss Bad Faith Count on Summary Judgment

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In dual decisions, two motions for partial summary judgment were decided by the federal district court in Louisiana involving State Farm and its insureds. See *Perrien v. State Farm Ins. Co.*, 2008 U.S. Dist. LEXIS 53820 (E.D. La. July 14, 2008); *Perrien v. State Farm Ins. Co.*, 2008 U.S. Dist. LEXIS 53844 (E.D. La. July 14, 2008).

The insureds' home sustained significant damage from Hurricane Katrina. State Farm provided both flood insurance and homeowner's insurance on the property. State Farm paid policy limits under the flood policy, \$152,900 for dwelling damages and \$52,900 for contents/personal property. Under the homeowner's policy, State Farm paid \$9,125 for dwelling damages, \$400 for contents damages, and \$11,564 for Loss of Use of the home. State Farm denied the remainder of plaintiffs' claim under the homeowner's policy because the additional damage for which recovery was sought had resulted from flood, an excluded peril under the homeowner's policy.

The insured filed suit seeking to recover the policy limits under their homeowner's policy as well as asserting a claim for bad faith based on State Farm's arbitrary and capricious failure to timely pay the amounts due to plaintiffs under their homeowner's policy. In the first decision, State Farm moved for partial summary judgment seeking an order that the insureds could not claim that damages for which they were previously compensated under their flood policy were, in fact, caused by wind. The motion was granted. While receipt of money for damages under a flood policy does not preclude plaintiffs from asserting a claim under their homeowner's policy, it does preclude plaintiffs from obtaining a windfall double recovery by now recharacterizing as wind damages those losses for which they have already been compensated by previously attributing them to flood damage.

State Farm filed a separate motion for partial summary judgment regarding the bad faith claim. The insureds argued that State Farm's failure to pay damages under the homeowner's policy constituted bad faith because State Farm failed to follow its own Wind/Water Protocol. The insureds charged State Farm ignored evidence gathered at neighboring homes. The insureds argued wind damage occurred hours before water arrived, but State Farm chose to withhold this information from its investigators.

The court denied State Farm's motion on the bad faith claim. There were genuine issues of material fact concerning whether State Farm adhered to its Protocol, and what information State Farm's investigators had when they issued their reports.

Source: Insurance Law Hawaii