

REPEATED USE OF EXPERT, BY ITSELF, DOES NOT ESTABLISH BAD FAITH

McManus v. State Farm Lloyds

The United States District Court for the Northern District of Texas recently rejected the argument that State Farm's repeated retention of a particular expert witness established bad faith. *McManus v. State Farm Lloyds*, 2004 WL 2533558 (N.D. Tex. 2004). After Plaintiff Charles McManus made a claim on his State Farm Lloyds homeowners' policy for foundation damage, State Farm sent George Perdue & Associates ("Perdue") out to conduct an investigation. Based on Perdue's conclusion that the foundation damage was not caused by a plumbing leak, State Farm denied coverage. Plaintiff sued, alleging bad faith among his claims.

The evidence showed that Perdue had performed over 1,000 inspections for State Farm in the preceding 5-7 years. The Court granted State Farm's Motion for Summary Judgment. In doing so, it concluded that "[s]tanding alone, the evidence that Perdue receives substantial revenues from State Farm is not sufficient to raise a genuine issue of material fact whether State Farm acted reasonably in denying McManus' claim." *Id.* at *4.

The Court distinguished the situation from that in *State Farm Lloyds v. Johns*, 1998 WL 54887 (Tex. App. – Dallas 1998, no pet.) (not designated for publication). In *Johns*, the homeowner had hired an engineer who contradicted the report prepared by State Farm's engineer. In addition, State Farm had inspected the residence prior to underwriting and found no foundation problems and had evidence in its file that the damage occurred quickly. That additional information, in addition to State Farm's repeated use of the expert in question, was sufficient for a jury to conclude that State Farm's reliance on the expert's report was unreasonable.

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