

# RECENT DEVELOPMENTS

## INSURANCE

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### EXTRA-CONTRACTUAL CLAIMS IN ADDITION TO A CLAIM FOR BREACH OF CONTRACT, SHOULD BE ABATED PENDING APPRAISAL

Jovita Debesingh v. GeoVera Specialty Insurance Company, \_\_\_ F. Supp. 3d \_\_\_ (S.D. Tex 2018).

<https://docs.justia.com/cases/federal/district-courts/texas/txsdce/4:2018cv02316/1532872/17>

**FACTS:** Plaintiff Jovita Debesingh purchased a homeowner's insurance policy from Defendant GeoVera Specialty Insurance Company to cover certain risks to her residence in La Porte, Texas. The policy contained an appraisal provision that stated that any suit regarding a dispute in the amount of losses claimed under the policy should be abated until after an appraisal award had been issued.

On April 27, 2018, Debesingh sued GeoVera alleging they had underpaid an insurance claim she made for damage to her residence as a result of Hurricane Harvey. Debesingh alleged breach of the insurance policy, violations of the Texas Insurance Code, and the DTPA. On August 9, 2018 GeoVera sent Debesingh a demand for appraisal, and subsequently filed a motion for abatement on August 13, 2018.

**HOLDING:** Motion for abatement granted.

**REASONING:** The court granted GeoVera's abatement, stating Texas courts interpret insurance policies according to the rules of contractual construction, adding that unambiguous contracts are enforced as written. Therefore, based on the plain language of the appraisal provision, the court concluded that the case should be abated pending completion of the appraisal process as described in the policy.

Debesingh argued that the court retained discretion in its decision to abate a lawsuit after ordering an appraisal, or while appraisal is ongoing, if it would aid in judicial efficiency and economy. The court agreed that may be the case when there is no mandatory abatement provision in the insurance policy. However, in this case, it was not just judicial economy, but a binding provision in the parties' contract that compelled the court to abate Debesingh's lawsuit.

Further, the court stated even if the policy had lacked the abatement requirement, the court would have concluded judicial economy was best served by abatement. According to the court, a majority of Texas courts have held that when a plaintiff asserts extra-judicial contractual claims in addition to breach of contract claims, it is generally in the best interest of justice that the entire case be abated pending appraisal. This is because an insurer's payment of an appraisal award will generally dispose of all contractual and extra-contractual claims. Even when appraisal fails to resolve the entire issue, litigation proceedings can be focused on the specific issues remaining.

Therefore, the court concluded GeoVera's motion for abatement should be granted, and the case stayed until after an appraisal award was issued in accordance to the parties' insurance policy.

**Based on the plain language of the appraisal provision, the court concluded that the case should be abated pending completion of the appraisal process.**