INSURANCE

DTPA AND INSURANCE CODE CLAIMS DID NOT SATISFY THE HEIGHTENED PLEADING REQUIREMENTS UNDER RULE 9(B)

Polinard v. Covington Specialty Ins. Co., ___ F.Supp.3d___ (W.D. Tex. 2021).
https://casetext.com/case/polinard-v-covington-specialty-ins-co

FACTS: Plaintiff Herbert Polinard Jr. leased his property to Club Essence under an agreement requiring the latter to insure the property and listing Polinard as an additional insured. Club Essence contracted insurance with Defendant Covington Specialty Insurance Company ("Covington").

In the middle of the supposed insurance coverage period, the property was damaged by a fire. Polinard submitted and was denied a claim by Covington because the policy was cancelled due to lack of payment from Club Essence.

His statutory claims did not allege the misrepresentation with sufficient specificity, and therefore failed to meet the heightened pleading requirement in Rule 9(b).

Polinard sued Covington and the insurance agents for violations of the Texas Deceptive Trade Practices Act for misrepresentation of material facts. Covington removed the case to federal court based on diversity jurisdiction. Polinard moved to remand the case to state court.

HOLDING: Motion denied.

REASONING: Polinard asserted that the insurance agents misrepresented material facts about the policy and thus violated Texas Insurance Code and DTPA.

The court rejected the claims because they did not satisfy the heightened pleading requirements under Rule 9(b) on two grounds. First, Polinard failed to allege sufficient evidence to establish privity with the insurance agents. Polinard needed to show that he was entitled to recover from the policy despite not being the primary insured. Second, Polinard failed to identify in his complaint who of the insurance agents made the promise and how, when, or where it was made. His statutory claims did not allege the misrepresentation with sufficient specificity, and therefore failed to meet the heightened pleading requirement in Rule 9(b).