



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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PUBLIC POLICY AGAINST PUNITIVE DAMAGES COVERAGE UNDER UM/UIM EXTENDS TO RELATED COVERAGE UNDER UMBRELLA POLICY

Last Thursday, the Houston Court of Appeals examined whether the public policy reasons precluding uninsured/underinsured (UM/UIM) motorist coverage for punitive damages extended to an umbrella policy that was endorsed to provide an excess layer of UM/UIM coverage. In *Laine v. Farmers Insurance Exchange*, 2010 WL 375937 (Tex.App. – Houston (1st Dist.) February 4, 2010), the insured was driving her mother home when an uninsured drunk driver struck her car. The insured's mother died in the accident and the insured claimed uninsured motorist under her Farmers auto and umbrella policies.

Farmers paid its \$250,000 uninsured motorist policy limit but did not make an offer under the \$1,000,000 umbrella policy which was endorsed to provide uninsured motorist coverage. The insured sued Farmers seeking to recover actual and punitive damages. And in a three phase trial, the jury awarded \$175,000 in actual damages and \$1,500,000 in exemplary damages. The court then entered a take-nothing judgment after applying a \$250,000 offset for actual damages paid and finding no coverage for punitive damages.

On appeal, the court examined policy language under both the UM/UIM and umbrella policy and related definitions. The court noted that the umbrella policy did not define "damages" in relation to the UM/UIM endorsement but simply referred to the underlying policy coverage. The court noted that Texas law and public policy considerations precluded coverage for exemplary or punitive damages under UM/UIM coverage observing that "the purpose of exemplary damages may not be obtained by penalizing those who obtain the insurance required by law for the wrongful acts of those who do not." The take-nothing judgment against Farmers was affirmed.

NEW PARTNERSHIP NOT ENTITLED TO PRIOR CORPORATION'S CGL COVERAGE

Last Wednesday, as a case of first impression for Texas courts, the U.S. District Court for the Northern District of Texas determined that Texas Business Organizations Code § 10.106 did not entitle a new partnership to coverage under the insured corporation's commercial general liability policy. In *VRV Development, L.P. v. Mid-Continent Casualty Co.*, 2010 WL 375499 (N.D.Tex. February 3, 2010), VRV, Inc. purchased a CGL policy in May 2004. On January 1, 2005, VRV, Inc. entered into an agreement with some general partners and converted itself into a limited partnership. VRV never informed Mid-Continent of the conversion into a limited partnership nor did VRV, Inc. ever request coverage for the new entity. The partnership contracted and built retaining walls which reportedly failed. And the builder, some homeowners and City of Dallas sued the partnership to recover damages. Mid-Continent denied coverage because VRV Development, L.P. was not a "Named Insured in the Declarations" entitled to

coverage under the policy. VRV sued Mid-Continent asserting breach of contract and extra-contractual causes of action.

The parties submitted the issues to the court on competing motions for summary judgment. The court observed that the effect of a conversion under Texas Business Corporations Act § 5.20, re-codified at Texas Business Organizations Code § 10.106, entitling the new entity to property rights owned by the converting entity, had not been addressed by Texas courts in the insurance context. The court applied a limited exception to the eight-corners rule to reach the issue and then determined that: “Allowing Plaintiffs to substitute a new party to an insurance contract, without Mid-Continent’s knowledge or approval, and without giving Mid-Continent the opportunity to evaluate the entity or person it is purportedly insuring, materially rewrites the insurance contract in a way that would seem to contravene existing authority.” Accordingly, the court granted Mid-Continent’s motion for summary judgment finding that Mid-Continent had no duty to defend or indemnify Plaintiffs.

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