



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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THREE NEW PROPOSED THAT WILL BE REQUIRED TO AVOID FRAUDULENT JOINDER

Rulings by the Federal courts that have reviewed pleadings in Hurricane Ike claims have varied as to the specificity that will be required to find that a non-diverse defendant has been fraudulently joined. In *Lakewood Chiropractic Clinic v. Travelers Lloyds Ins. Co.*, 2009 WL 3602043 (S.D. Tex.) the court found that a petition that alleged that Travelers and Victor (the non-diverse claims representative) committed a list of actions was insufficient to state facts that would support a probable recovery against Victor because the Plaintiff failed to identify which acts were specifically attributable to Victor and failed to allege facts to support the allegations which were merely recitals of the statutory provisions of the insurance code. The same reasoning was applied in finding a fraudulent joinder in *Leineweber v. Unicare Life & Health Ins. Co.*, 2009 WL 3837873 (W.D. Tex.). In *Leisure Life Senior Apartment Housing II, Ltd. v. Lloyds of London*, 2009 WL 3834407 (S.D. Tex.), the Court refused to find fraudulent joinder when the plaintiff tracked statutory and common law causes of action in allegations that specifically named the non-diverse defendant even though no factual allegations were asserted to show how the non-diverse defendant violated that alleged statutory and common law duties. Finally, the Court allowed the plaintiffs to introduce summary judgment type evidence in support of their non-factual/statutory based allegations against the non-diverse defendant to avoid fraudulent joinder in *Davis v. Travelers Lloyds of Texas Ins. Co.*, 2009 WL 3255093 (S.D. Tex.). Although allowing a summary judgment type of review in a fraudulent joinder inquiry is recognized, it is not widely used. It is within the Court's discretion to do so and in the *Davis* case the Court only required minimal evidence of participation by the non-diverse defendant to deny the fraudulent joinder.

PROPERTY DAMAGE BENEFITS PAID TO INSURED UNDER AUTO POLICY ARE SUBJECT TO THE COLLATERAL SOURCE RULE

In *Bejjani v. TRC Services, Inc.*, 2009 WL 3856924 (Tex. App.-Houston [14th Dist.]), TRC Services performed repairs on Bejjani's car which was insured by Safeco. Safeco authorized TRC to perform the repairs but Bejjani did not. Safeco issued a joint check to Bejjani and TRC which Bejjani refused to endorse. Bejjani then sued TRC alleging a variety of causes of action including DTPA violations arising out of the unauthorized repairs. Bejjani recovered a judgment for damages exclusive of attorneys' fees for in excess of \$27,000. TRC attempted to assert a credit for the \$11,607.91 paid by Safeco under the one satisfaction rule. The court refused to allow the credit asserting that Bejjani had procured the auto property damage coverage for his benefit and TRC was not privy to the contract and had no right to claim any benefit or credit for the insurance proceeds paid to TRC.

NATION'S BEST INSURANCE COVERAGE SEMINAR IN NYC – DEC 3RD AND 4TH

It is not too late to sign up for what has become the nation's largest and best insurance litigation conference – DRI's Insurance Coverage Practice Seminar. This year's seminar will be on Thursday and Friday, December 3rd and 4th, at the New York Sheraton Hotel. Chris Martin of our firm is this year's Program Chair. The program features a dozen of the nation's leading insurance lawyers speaking on some of the most important topics facing insurers in their coverage and litigation exposures. For more information, [please click here](#).

HAPPY THANKSGIVING

Our research and writing staff will be off for Thanksgiving so the next edition of our Newsbrief will be on Monday, December 7th. We wish all of our readers a wonderful Thanksgiving holiday weekend.

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom, L.L.P.
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