



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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WIND / SURGE RELATED CLAIMS AGAINST RIMKUS ENGINEERS DEFEATED AS A MATTER OF LAW

Last Tuesday, the Fifth Circuit affirmed a district court's grant of judgment as a matter of law in favor of Rimkus Consulting Group and James Jordan, engineers hired by an insurer to evaluate damage to an insured's house caused by Hurricane Katrina. In *Aiken v. Rimkus Consulting Group, Inc.*, 2009 WL 1456568 (5th Cir. (Miss.) May 26, 2009), engineers were retained to evaluate damage caused by both wind (covered damage) and storm surge (excluded damage). Rimkus retained S & B Infrastructure to inspect the residence and once their report was received, Jordan modified the report, added his name, signed and sent the report to the insurer. The report concluded that high winds and storm surge combined to destroy the insured residence and that the percentage of damage caused by each could not be determined. The insurer requested a supplemental report to clarify the data and help determine the damages caused by wind as opposed to surge and flooding. The supplemental report attributed a large portion of the damage to flooding and the insurer issued payment for the wind damage.

The insured sued Rimkus and Jordan along with the insurer alleged in part; fraud, conspiracy, concealment, gross negligence, malice, and sought punitive and other extra-contractual damages. At the conclusion of the plaintiff's evidence, the district court granted judgment as a matter of law in favor of Rimkus and Jordan. On appeal, the Fifth Circuit examined the evidence offered and allegations made and upheld the district court's ruling. Significantly, the court also examined several evidentiary rulings, including "whether it was customary for one engineer to sign another's name to a revised report." Evidence from a separate lawsuit by a former Rimkus engineer, Overstreet, who sued Rimkus for allegedly signing his name to reports without permission, was excluded and the ruling was found to be within the district court's sound discretion in light of the facts presented. Note: Although this decision is not from a Texas court, its potential impact on Texas courts warranted publication in the Texas Insurance Law Newsbrief.

DISTRICT COURT DISMISSES ALL CLAIMS AGAINST INDEPENDENT ADJUSTER

The U.S. District Court in Fort Worth recently denied a motion to remand after an insurer removed a bad-faith lawsuit to federal court alleging that the independent adjuster was fraudulently joined to defeat diversity jurisdiction. In *Weldon Contractors, Ltd. v. Fireman's Fund Insurance Co. & John Baker*, Cause No. 4:09-CV-165-A (N.D. Fort Worth, May 22, 2009), the independent adjuster hired an expert to inspect the damage and to determine the extent of hail damage to the insured building. The report concluded that the damage occurred in 2004, three years before the 2007 claim. The report was submitted to the insurer but they evidently took no action on the claim. In addressing the plaintiff's motion to remand, the court examined the vague and conclusory factual allegations against the adjuster and

“defendants” in general, and found no reasonable basis for predicting recovery against the adjuster. Accordingly, the motion to remand the lawsuit was denied and all claims against the adjuster were dismissed.

DRI BAD FAITH AND EXTRA-CONTRACTUAL CLAIMS SYMPOSIUM

The DRI Insurance Law Committee is presenting a seminar on emerging bad faith litigation issues at the Seaport Hotel in Boston June 18-19, 2009. Some of the nation’s leading bad faith trial lawyers will cover topics including the future of the “genuine dispute” defense; defending “institutional” bad faith claims; winning trial strategies in bad faith cases; avoiding “set up” claims; trial strategies in punitive damage insurance cases; effective mediation strategies; choice of law and forum selection considerations; managing relationship with excess carriers; and ethical obligations and quandaries in bad faith insurance cases. MDJW Partner Chris Martin will be speaking on trial strategy considerations in bad faith cases. For more details, go to <http://www.dri.org/open/SeminarDetail.aspx?eventCode=20090045>

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