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The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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SUBROGATION RIGHTS INCLUDE RELATED CONTRACTUAL RISKS

Last Thursday, the Fort Worth Court of Appeals held that an insurer who stepped into the shoes of its insured to pursue subrogation rights was responsible for paying attorney's fees to the "prevailing party" as required by a contract between the insured and the other party. In *Nathan A. Watson Co. v. Employers Mutual Casualty Co.*, 2007 WL 291205 (Tex.App.- Fort Worth, February 1, 2007), Watson developed raw land which was sold to the insured homebuilder. Some of the homes built developed foundation problems and the builder was sued. The builder's insurers settled some of the claims and later asserted subrogation rights against Watson. The contract between Watson and the builder provided that if any party employed an attorney to enforce the agreement between the two "the non-prevailing party in any final judgment agrees to pay the other party all reasonable costs, charges and expenses, including attorney's fees, expended or incurred in connection therewith." Watson prevailed in the subrogation action with the jury finding in its favor on all counts, however, no damages were awarded. As a result, the trial court denied Watson's request for attorney's fees and costs and awarded no damages to either party. Watson appealed.

The Fort Worth Court of Appeals rejected the insurers' first argument that because they were not parties to the contract, they could not be bound to the liabilities of the contract between the insured and Watson. The court distinguished the insurers' cases because they were not subrogation cases. Likewise, the court rejected the insurers' second argument that Watson was not entitled to attorney's fees because he was not awarded any damages despite the fact that he prevailed in the lawsuit. Again, the court observed the cases cited were not subrogation cases and also didn't involve a contractual agreement between the insured and a third-party. Lastly, as a matter of first impression for Texas courts, the court addressed the insurers' third argument that it was entitled to the rights of its insured against the third-party, but was not subject to any liabilities even when suing under the terms of a contract. The court held that "when an insurer sues in subrogation under a contract, it is entitled to all of the rights of its subrogee and likewise exposed to all of its liabilities." Accordingly, the court awarded Watson \$583,000 in attorney fees against the insurers.

INSURER BOUND BY SETTLEMENT AGREEMENT DESPITE UIM POLICY LIMITS MIX-UP

In *Metropolitan Casualty Insurance Co. v. Foster*, 2007 WL 274185 (Tex.App.- Houston (1st Dist.) February 1, 2007), the insurer agreed to pay \$50,000 in underinsured motorist (UIM) policy limits to settle a wrongful death case in probate court and a final order was entered. Almost four months later, and after making partial payment based the agreement, the insurer realized that its policy limit was \$25,000 and not the \$50,000 agreed to before the court and it then refused to pay more than the \$25,000 limit. The claimants sought to enforce the agreement and the trial court ordered the insurer to pay the agreed amount. On appeal, the court held that: "Because the approval order was final and needed no clarification, and because Metropolitan did not discover its mistake and seek within 30 days of the approval order's signing to have it vacated, modified, corrected or reformed, the court properly exercised its inherent power to enforce the approval order."

TEXAS INSURANCE CODE DOES NOT PROHIBIT BENEFICIARIES GRANT OF SECURITY INTEREST IN STRUCTURED SETTLEMENT PROCEEDS

As a matter of first impression for Texas courts, last Wednesday the Dallas Court of Appeals in *Coffey v. Singer Asset Finance Co., L.L.C.*, 2007 WL 258962 (Tex.App. – Dallas January 31, 2007), upheld the trial court’s ruling that as a matter of law Texas Insurance Code Article 21.22 does not prohibit transactions whereby an annuitant grants a “security interest in his or her rights to structured settlement payments and/or the annuity payments that fund the structured settlement payments.” In doing so, the court distinguished “security interests” from “assignments or commutations” of the structured settlement proceeds as prohibited by Section 5 of Article 21.22.

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