The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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COURT RECOGNIZES POLICY LANGUAGE ELIMINATES APPLICATION OF "EIGHT-CORNERS RULE" TO DUTY TO DEFEND – ALLOWS EXTRINSIC EVIDENCE

A judge in the United States District Court for the Northern District of Texas recently addressed the allowance of extrinsic evidence in support of the insurer's motion for summary judgment when the "eight-corners rule" did not apply to the duty to defend under that policy due to revisions in the policy language. In *GuideOne Specialty Mutual Insurance Co. v. Missionary Church of Disciples of Jesus Christ*, 2011 WL 3670009 (N.D.Tex., July 7, 2011), the court observed that decisions applying the eight-corners rule in Texas typically rely on policy terms providing that the insurer will defend "even if the allegations of the suit are groundless, false or fraudulent." The policy in this lawsuit, however, did not include that provision. To the contrary, the policy at issue stated in relevant part: "we have no duty to defend 'suits' for 'bodily injury' or 'property damage' to which this insurance does not apply." In concluding that certain extrinsic evidence was proper for consideration of the insurer's obligation to defend, the court noted that the policy language "could not make it any clearer that the parties contracted in such a way as to eliminate applicability" of the "eight-corners rule." The extrinsic evidence was thus allowed.

Editor's note: although this policy language exists in many policies sold in Texas, this is the first time this coverage argument has been recognized by a Texas court. It certainly gives a road map to the use of extrinsic evidence in coverage determinations when the policy in question contains similar defense obligation language.

HOMEOWNER LACKS STANDING TO SUE INSURER UNDER LENDER-PLACED HOMEOWNERS' POLICY

Last Tuesday, a judge in the McAllen Division of the United States District Court for the Southern District of Texas granted summary judgment to an insurer after finding that the homeowner lacked standing under a lender-placed policy to bring a bad faith lawsuit for claims related to hurricane damage to the insured residence. In *Trevino v. Evanston Ins. Co.*, 2011 WL 2709063 (S.D.Tex., July 12, 2011), the mortgage company secured insurance coverage to protect its interests in the event that the insured failed to maintain coverage. The lender was the only named insured under the policy. The homeowner filed a claim for roof and water damage following Hurricane Dolly and ultimately filed this lawsuit against the insurer alleging breach of contract, unfair claim settlement practices and other causes of action.

The insurer filed a motion for summary judgment asserting that the homeowner lacked standing to sue under the policy. The homeowner responded by claiming standing as a third-party beneficiary under the

policy. The court observed that the clear intent of the lender-placed (also known as "forced-placed") policy was to protect the lender's security interest in the property. Following review of Texas and Louisiana law, the court noted that "a presumption exists that parties contracted for themselves unless it 'clearly appears' that they intended a third party to benefit from the contract." And, after addressing related arguments based on policy language, the court found no provision reflecting a clear intent to confer a direct benefit on the homeowner. The court held: "Therefore, Plaintiff is not a third-party beneficiary under the Policy and has no standing to pursue his claims." Summary judgment was granted in favor of the insurer.

MDJW SECURES DEFENSE VERDICT FOR CINTAS CORPORATION

Last week, a jury in the Western District of Texas concluded that Cintas Corporation, a uniform and mat rental service company, was not liable for plaintiff's injuries as claimed in *Veta Garvey Farmer v. Home USA, Inc., Cintas Corporation No. 2 and U.S. Maintenance* (No. A-10-CA-591-SS). The case concerned a trip-and-fall accident at a Home Depot store in Austin involving a Cintas rental mat. The plaintiff broke her hip as a result of the fall which led to emergency surgery and extensive rehabilitation in multiple facilities. Plaintiff claimed the placement or maintenance of the rental mat by Cintas created an unreasonably dangerous condition. Prior to trial, the plaintiff demanded Cintas pay $1.6 million. During trial, the plaintiff asked the jury for $2 million in damages. But, after less than two hours of deliberation, the jury unanimously found no liability on the part of Cintas Corporation.

Patrick Kemp and Robert Wall with Martin, Disiere, Jefferson & Wisdom's Austin office had the privilege of representing Cintas Corporation in the trial of this matter and we congratulate both of them and the client team on this impressive win.