



The Weekly Update of Texas Insurance News

## TEXAS INSURANCE LAW NEWSBRIEF



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### **FEDERAL COURT GRANTS REMAND AFTER HURRICANE IKE SUIT REMOVED ON THE BASIS OF DIVERSITY JURISDICTION UNDER IMPROPER JOINDER**

Last week a federal court held that a Hurricane Ike lawsuit should be remanded after it was removed on the basis of diversity jurisdiction citing improperly joined. In *Rankin Road v. Underwriters at Lloyds of London*, 2010 WL 4007619 (S.D. Tex., Oct. 12, 2010), the court granted Plaintiff's motion to remand finding that the independent adjusting company Gulf Coast Claims Service could be sued in this matter. Here, Gulf Coast was the only Texas defendant sued and, to remove the case on the basis of diversity jurisdiction, an argument was asserted that it was improperly joined.

As part of its analysis, the court found that adjusters were subject to the Texas Insurance Code under §541.002(2), and that Gulf Coast's actions fit the definition of "adjusting" Plaintiff's claim. For example, the court noted there were several letters sent by Gulf Coast to Plaintiffs on Gulf Coast letterhead claiming they were the "independent adjusters" assigned to the claim. The letters were signed by the two people actually performing the investigation (and sued as individuals in this lawsuit). The court ruled there were issues of fact as to whether the individuals were acting under the apparent authority of Gulf Coast and whether Gulf Coast could be held vicariously liable for their actions. Since these fact issues existed, the Court granted Plaintiff's motion to remand. The court also ruled that Plaintiff's Pleading had met Texas state court requirements for specificity of claims; meeting the federal pleading requirements was not necessary.

### **APPELLATE COURT CONCLUDES PROPERTY OWNER OWED NO LEGAL DUTY TO AN INDEPENDENT CONTRACTOR WHO WAS INJURED WHILE WORKING ON RESIDENTIAL REMODEL PROJECT**

Last Wednesday, an appellate court held that a residential property owner did not owe a legal duty to an independent contractor who was injured while working on a remodel project. In *Puente v. Leonard*, 2010 WL 4008367 (Tex. App.—San Antonio October 13, 2010), Leonard hired Puente to do painting and drywall work as part of a remodeling project at a residence owned by Leonard. Puente fell and injured his knee while he was attempting to paint crown molding above some cabinets. After his accident, Puente sued Leonard alleging she owed him a duty to exercise ordinary care in keeping the premises in a reasonably safe condition. Leonard successfully moved for summary judgment and this appeal ensued.

Puente made two arguments on appeal: First, Leonard had a duty to warn him of hazardous conditions. While the court recognized that a property owner has a duty to warn an independent contractor, it is limited to concealed, pre-existing hazards that the owner either knew or should have known about. Here,

Puente was injured when he stepped on some plywood left on the counter by another contractor. The appellate court agreed with the trial court that this was not a pre-existing condition. Second, Puente argued that Leonard controlled the manner and means of his work, thereby giving rise to a duty. The court determined Leonard's instructions did not extend to the "operative detail" of Puente's work. Because Leonard did not control the details of Puente's work, Leonard did not owe Puente any duty to insure that he performed his work in a safe manner.

## **HURRICANE TRIAL UPDATE**

The bad faith trial against Liberty Mutual arising out of Hurricane Rita entered its third week of trial this morning in Beaumont, Texas. The case of John and Deborah Cahill vs Liberty Lloyds involves claims that Liberty unpaid property damages arising out of the 2005 hurricane. Plaintiffs had still not rested as of the end of last week but the jury had heard from the plaintiffs themselves, their engineering expert (Greg Becker) and their damage expert (Mike Carter). Transcripts of their direct and cross examinations are available through Carol Key of our office should any client need them for other hurricane cases involving the Mostyn Law Firm. Chris Martin and Wayne Pickering of our office are trial counsel.

## **MDJW WELCOMES MORE NEW ATTORNEYS**

Teri Baker. Recently, Ms. Baker joined our insurance team as an associate in our Austin office. She has a strong background in litigation and has spent the past several years practicing in Houston and throughout Texas. Ms. Baker's undergraduate degree is from the University of Texas and law degree from South Texas College of Law.

## **MJDW HOSTING OPEN HOUSE FOR AUSTIN OFFICE**

Come and celebrate the growth and bright future ahead for our firm and specifically the Austin office. Opened in 2002, the Austin office has grown from one lawyer and an assistant to seven full-time lawyers, several contract attorneys, and a hard-working staff of eight persons devoted to our operations and success. To celebrate, you are cordially invited to join the staff and lawyers at MDJW for an open house at our new Austin office location on Tuesday, October 19, 2010, from 5:00-7:30 p.m. We treasure the friendships and working relationships we have with so many clients and friends in Central Texas. We hope that you can drop by to visit, see our new space, and enjoy some good food and beverages. Our office is located in Building IV of the Las Cimas Office Complex at 900 South Capital of Texas Highway, Suite 425, Austin, Texas. Kindly RSVP to the managing partner of the Austin office, Jeff Farrell, at [farrell@mdjwlaw.com](mailto:farrell@mdjwlaw.com).

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