



The Weekly Update of Texas Insurance News

## TEXAS INSURANCE LAW NEWSBRIEF



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February 23, 2010

### **FEDERAL COURT FINDS NO DUTY TO DEFEND OR INDEMNIFY CONTRACTOR FOR WORK PERFORMED DURING CHURCH ROOF PROJECT**

Recently a federal court concluded an insurance carrier did not owe its insured a duty to defend and indemnify for a claim arising from its work during a roof project at a Church. In *Gemini Ins. Co. v. Trident Roofing Co., L.L.C.*, 2010 WL 335314 (N.D. Tex. January 22, 2010), Gemini filed a declaratory judgment action seeking a declaration that it neither owed a duty to defend or indemnify its insured, Trident Roofing Company, L.L.C. for a claim related to roofing work on a Church building. Specifically, the Church filed suit against Trident for breach of contract, breach of warranty, negligence, and violations of the Texas Deceptive Trade Practices Act in connection with damages sustained by Trident's "torching down" of the Church's roof. In response, and after the claim was submitted to Gemini under Trident's general liability policy, this declaratory judgment action was initiated. Gemini filed a summary judgment and Trident did not respond.

After a swift introduction to Texas coverage principles, the court concluded the "torch down" exclusion applied to preclude coverage for Trident in the lawsuit filed by the Church. The court repeated a well-settled notion in coverage disputes that, "A claim need only bear an incidental relationship to the described conduct to 'arise out of' that conduct." The court went on to explain but for the torching down roofing job, Trident would not have been working on the Church site. Because the torch down exclusion applied to prevent coverage, the court granted Gemini's motion for summary judgment.

### **APPELLATE COURT CONCLUDES RESIDENT OF VEHICLE OWNER ON PERSONAL AUTO POLICY DOES NOT QUALIFY AS "COVERED PERSON" FOR PURPOSES OF RECOVERING UIM COVERAGE**

Earlier this month an appellate court held a resident with a named insured did not qualify as a "covered person" for purposes of collecting UIM benefits after an accident. In *Williams v. State Farm Mut. Ins. Co.*, 2010 WL 415408 (Tex. App. -- Texarkana February 5, 2010), a resident related to the owner of the vehicle listed on a personal auto policy was in an accident in her own separate personal auto. In this case, the named insured, Richard Conner, obtained a personal liability policy which covered a 2002 Cadillac Escalade titled in Rewa Hubbard's name. Both Conner and Hubbard were listed as drivers on the declarations page who "own or regularly operate any vehicle in your household." Hubbard's mother, who resides with Hubbard, was involved in a vehicle collision in her own vehicle, a 1998 Lincoln Town Car. Evidently, the person who caused the accident had inadequate liability insurance coverage because

Hubbard's mother submitted a UIM claim to State Farm seeking to recover for damages sustained by her in the collision.

State Farm denied the claim and Hubbard's mother sued for breach of contract for failing and refusing to pay UIM benefits under the policy. The lawsuit was also filed against the agent who was involved in obtaining the policy. The agent was later nonsuited. State Farm filed a motion for summary judgment and included evidence to support its position that Hubbard's mother was not a "covered person." Hubbard's mother argued a material fact question was raised based upon evidence she provided that her daughter was a named insured. The dispute turned on the finding whether Hubbard was a named insured under Conner's policy. Given the policy language, a State Farm underwriting representative testified Hubbard's mother did not qualify as a named insured. The summary judgment evidence shows Hubbard owned the 2002 Escalade and she additionally paid premium for the policy. Hubbard's mother further alleged the policy was ambiguous because it failed to meet State Farm's underwriting guidelines. The trial court granted summary judgment in favor of State Farm.

On appeal, the court held the policy was not ambiguous, but recognized parol evidence could be used to show mutual mistake for purposes of seeking the equitable remedy of contract reformation. That relief, however, was not an issue in this case. Lastly, the court held no procedural errors were committed and the court did not abuse its discretion. Therefore, the court affirmed summary judgment for State Farm and held UIM benefits were not owed.

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