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TEXAS INSURANCE LAW NEWSBRIEF



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HOUSTON COURT OF APPEALS REFUSES TO GRANT MANDAMUS RELIEF TO TWIA WHICH WOULD HAVE ALLOWED TWIA TO AVOID PRODUCING ITS COMPLAINT LOG

Last Thursday, the First Court of Appeals in Houston denied mandamus to relief to the Texas Windstorm Insurance Association (TWIA). *In re TWIA*, 2010 WL 143666 (Tex. App.—Houston [1 Dist.] January 14, 2010). The Galveston County District Court had ordered TWIA to produce its complaint log from September 13, 2008, to October 26, 2009. The Texas Department of Insurance requires insurers to maintain a record of complaints. TWIA sought mandamus relief from the court of appeals. Without discussion or analysis, the court of appeals denied mandamus relief. It should also be noted that the decision is unpublished.

TITLE INSURER RELYING ON NOTICE PROVISION IN TITLE POLICY MUST SHOW PREJUDICE AND COURT ALLOWED SHOWING OF PREJUDICE AS A MATTER OF LAW

Also last Thursday, in a case of first impression, the Corpus Christi Court of Appeals extended the notice-prejudice rule to title insurance policies. *Washington Mutual Bank v. Commonwealth Land Title Ins. Co.*, 2010 WL 135685 (Tex. App.—Corpus Christi January 14, 2010). On November 22, 2003, Washington Mutual (WAMU) purchased title insurance from Commonwealth on its refinancing of a home for \$137,513. The deed was not recorded until January 29, 2004. Less than sixty (60) days after the deed was recorded, the homeowners filed bankruptcy. The bankruptcy trustee instituted adversary proceedings against WAMU alleging that the recording was a preferential transfer not permitted by the bankruptcy code. The trustee filed a summary judgment motion, which WAMU did not oppose. WAMU entered into an agreed judgment with the trustee, surrendering WAMU's rights in the property and taking an unsecured interest in the estate. WAMU eventually received a \$25,910.86 disbursement from the estate. Four months after the agreed judgment, WAMU submitted a claim on the title policy. Commonwealth denied the claim on the grounds that WAMU failed to timely notify it of the adversary proceeding. WAMU sued Commonwealth, and Commonwealth moved for summary judgment which the trial court granted.

On appeal, the appellate court began by stating that Commonwealth must show both late notice and prejudice because of the late notice. WAMU argued that Commonwealth could not show prejudice because there were no viable defenses to the trustee's adversary proceeding in bankruptcy and that WAMU's actions were appropriate. The court stated that "WAMU's focus on the potential failed

defenses misses the mark.” The court rejected WAMU’s argument, holding instead that Commonwealth was denied the opportunity.

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