



The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF



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COURT FINDS NO DUTY TO INDEMNIFY – LOSS PREDATES POLICY PERIOD

Last Monday, a U.S. District Court Judge for the Southern District of Texas examined an insurer's duty to indemnify an insured who settled claims alleging damage to land and its use and enjoyment and granted summary judgment in favor of the insurer. In *Mount Vernon Fire Ins. Co. v. Boyd*, 2012 WL 4356285 (S.D.Tex. September 24, 2012), the insurer issued a Commercial General Liability policy to Boyd effective April 28, 2009. Boyd was sued by an adjacent land owner for draining a shared lake and for coming onto the adjacent property and removing large amounts of earth and soil. The lawsuit against the insured claimed in part that Boyd began draining the shared lake in March 2008, well before the policy period. Also, the claims related to the soil removal did not mention a specific date but did reference a foreclosure sale of Boyd's property in March 2009 from which the court deduced that the soil removal also took place before the policy period. Accordingly, the court concluded that because the loss or damage was in progress or took place before the policy was in force, the insurer had no duty to indemnify the insured for amounts paid in settlement of the underlying claims.

COURT DENIES MOTION TO REMAND – ADJUSTER IMPROPERLY JOINED

Last Wednesday, a U.S. District Court Judge for the Northern District of Texas denied an insured's motion to remand and granted an adjuster's motion to dismiss for failure to state a claim. In *Springcrest Partners, LLC v. Admiral Insurance Company*, 2012 WL 4459423 (N.D.Tex. September 26, 2012), the insured sued its insurer, an adjusting company, and the in-state adjuster alleging breach of contract and Insurance Code violations arising from a claim following a 2010 snow storm. Before the insurer was served, the adjusting company and adjuster removed the case alleging that the adjuster was fraudulently joined to defeat diversity jurisdiction and then filed a motion to dismiss.

The court examined the allegations asserted and noted in part that "the petition makes broad, conclusory allegations that often fail to distinguish between the actions of Admiral, Engle Martin and Cimino" the adjuster. Further, examining the alleged Insurance Code violations the court observed in part that "[t]hese allegations are really legal conclusions masquerading as factual allegations, and they lack factual support in the petition." Accordingly, the court dismissed the adjuster from the lawsuit and denied plaintiff's motion to remand.

EL PASO COURT OF APPEALS WITHDRAWS AND REVERSES ITS PRIOR OPINION AS TO ABATEMENT OF EXTRA-CONTRACTUAL CLAIMS IN UNDERINSURED MOTORIST ACTION

On August 8, 2012, the El Paso Court of Appeals held a trial court should have severed plaintiffs' bad faith claims from their breach of contract claim in an underinsured motorist action, but the trial did not err in refusing to abate plaintiffs' extra-contractual claims. *In re State Farm Mut. Auto. Ins. Co.*, --- S.W.3d --- 2012, WL 3195099, No. 08-12-00176-CV. (Tex. App.—El Paso, August 8, 2012). On September 19,

2012, however, the El Paso Court of Appeals reversed its decision to deny mandamus relief with respect to the portion of the trial court's order denying abatement and ordered the lower Court to abate the extra-contractual claims pending the determination of plaintiffs' contract claim. *In re State Farm Mut. Auto. Ins. Co.*, --- S.W.3d ---, 2012 WL 4099081, No. 08-12-00176-CV. (Tex. App.—El Paso, Sep. 19, 2012).

Following the Appellate Court's August 8, 2012 decision, State Farm moved for rehearing as to the portion of the Court's opinion regarding abatement, arguing that the decision was contrary to well-established authority requiring abatement in uninsured/underinsured cases. After reviewing the arguments and authorities cited in State Farm's motion for rehearing, the Court agreed that trial court abused its discretion by failing to abate plaintiffs' extra-contractual causes of action because State Farm had specifically shown that it would be immediately prejudiced if the extra-contractual claims were not abated. Citing *In re United Fire Lloyds*, 327 S.W.3d 250, 257 (Tex.App.-San Antonio 2010, orig. proceeding) and *Brainard v. Trinity Universal Ins. Co.*, 216 S.W.3d 809 (Tex. 2006), the El Paso Court of Appeals explained that severance and abatement of extra-contractual claims were required since State Farm was under no contractual duty to pay UM/UIM benefits until plaintiffs established the liability and underinsured status of the other motorist, which had not occurred in this case.

[Editor's note: The August 8, 2012 opinion issued by the El Paso Texas Court of Appeals is discussed in [MDJW's August 20, 2012 Insurance Newsbrief.](#)]

MDJW "FIRST FRIDAY" WEB SEMINAR – THIS FRIDAY!

Our next MDJW "First Friday" Web Seminar will be held this Friday, October 5, 2012 at noon Central. Kenni Lucas, a partner in the Houston office of MDJW will present "Adjuster Toolbox," an overview of some unique "tools" which can be used by adjusters, claim managers, and litigation managers to reasonably, fairly, and ethically adjust and resolve a wide variety of claims in Texas. Ms. Lucas will discuss the latest trends in contractual, statutory, and common law in Texas and discuss some creative ideas which those handling Texas claims should consider during the handling of their claims. She will also discuss some creative tools which can assist adjusters in meeting those obligations while avoiding litigation exposure.

Ms. Lucas has 25 years of experience in the Texas insurance industry. Before getting her law degree, she worked in P&C underwriting, agency claims management, and as a licensed P&C adjuster for a major insurance carrier. Ms. Lucas' law practice involves the defense of lawsuits involving coverage, extra-contractual liability and policy interpretation issues in both commercial and personal lines policy litigation, as well as assisting with complex claims investigations.

One hour of free CE credit will be available to all insurance professionals for the program. Please have your TDI adjuster number available when you register.

To register for this presentation, please go to the registration page at the attached link: <https://student.gototraining.com/r/7313218318549461504>

After registering you will receive a confirmation email containing information about joining this Friday's CE program. As always, our "First Friday" Web Seminar is free.

If you have never participated in one of our MDJW webinars, or, if you have had trouble in the past connecting to a webinar, please use the following link to check your computer's connectivity: http://support.citrixonline.com/en_US/gotomeeting/all_files/GTM140010

MDJW CENTRAL TEXAS INSURANCE SEMINAR – NOVEMBER 9TH IN SAN ANTONIO

Adjusters, claims managers, litigation managers, and in-house counsel should mark your calendars for the 2012 MDJW Central Texas Insurance Seminar which will be held in San Antonio on Friday, November 9th, at the Pearl Stable on the campus of the Culinary Institute of America, 307 Pearl Parkway in San Antonio. The program will run from 9:00 a.m. to 4:00 p.m. and will cover cutting edge insurance issues for anyone involved in P&C claims or lawsuits in Texas. This FREE program will feature some of the state's leading insurance lawyers from our firm who will be providing updates on the latest decisions and latest legal trends across multiple liability and property topics including the latest *Stowers* problems, inadequate limits issues, punitive damage exposures, Texas bad faith update, new appraisal issues, homeowners and auto insurance updates, and much more. Chris Martin, David Disiere, Barrie Beer, Kenni Lucas, Andrew Schulz, Jeff Farrell, Tanya Dugas, Mark Dyer and several others from the firm will teach on cutting edge issues impacting those who handle claims or manage insurance litigation in Texas. 7 hours of CE and CLE credit will be provided. Lunch will be provided as well.

To register, please send an email with your name, employer, and work address to: ce@mdjwlaw.com OR call 713-632-1737 with the same information. Following receipt of a registration request, we will reply with more detailed information regarding the location of program in San Antonio. Seating is limited, so register as early as you can. We hope to see many of our friends from the insurance industry on November 9th in San Antonio!

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom, L.L.P.
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