



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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DEFENDANT FAILS TO PROVE THAT PLAINTIFFS' CLAIMS ARE BARRED BY WORKERS COMPENSATION ACT

In a recent opinion, the Federal District Court Judge in the Marshall Division of the Eastern District of Texas denied summary judgment to an owner/operator of an oil well sued for personal injuries sustained by a flowback consultant injured at the well site. *Taylor v. Nadel & Gussman, LLC*, 2009 WL 252 6451 (E.D. Tex. Aug. 17, 2009). The defendant argued that it was entitled to statutory protection under the Texas Workers Compensation Act. It argued to the trial court that it was a subscriber and the flowback consultant was a borrowed servant at the time of the accident.

The court was not persuaded by the defendant's argument. The court noted the defendant's summary judgment proof was lacking. The defendant did not provide a copy of its workers compensation policy to prove it was a subscriber. The defendant did not provide a written agreement for it to provide workers compensation insurance to the flowback consultant as an employee of an independent contractor. The defendant also did not present evidence that it controlled the flowback consultant's work sufficient to establish an employment relationship.

INSURER WINS JUDGMENT NO DUTY TO DEFEND OR INDEMNIFY INSURED

In a well-reasoned opinion, the a Federal District Judge for the Brownsville Division of the Southern District issued judgment following a bench trial for National Union Fire Insurance Company in a coverage dispute arising from the manufacture and production of tankless water heaters. *National Union Fire Ins. Co. v. Puget Plastics Corp., et al.*, Slip Copy, 2009 WL 2485757 (S.D.Tex. August 12, 2009.) The coverage dispute arose after a jury found that National Union's insured engaged in false, misleading, or deceptive acts or practices, fraud, negligent misrepresentations, acted unconscionably, and failed to comply with warranties in its manufacturer of a plastic part in the fully assembled tankless water heater. National Union had issued a commercial umbrella policy, and did not participate in the defense of the underlying case. National Union filed for a declaratory judgment four days after entry of the jury verdict against its insured. The insured cross filed.

While the trial court considered and addressed other issues, the trial court's judgment for National Union rested on whether the insured carried its burden to allocate the damages in the underlying case between covered and uncovered losses. The trial court followed Texas' doctrine of concurrent causation, which provides that when covered and non-covered perils combine to cause a loss – the insured must prove which portion of the loss was caused by a covered peril. The trial court found that the insured failed to meet its burden to prove which portion of the underlying jury's verdict arose from a covered peril. And,

the court specifically noted that the insured could have presented new evidence in the coverage action to meet its burden.

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