The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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A Service of Martin, Disiere, Jefferson & Wisdom L.L.P.
Principal Office 808 Travis, Suite 1800 Houston, Texas 77002 713.632.1700 FAX 713.222.0101
111 Congress Avenue, Suite 1070 Austin, Texas 78701 512.610.4400 FAX 512.610.4401
900 Jackson Street, Suite 710 Dallas, Texas 75202 214.420.5500 FAX 214.420.5501

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HOUSTON'S FOURTEENTH COURT OF APPEALS LIMITS ANALYSIS OF PLAIN AND ORDINARY MEANING TO THE USE OF TERM WITHIN POLICY, REFUSING TO CONSIDER OTHER MEANINGS THAT MIGHT BE AVAILABLE

Last Thursday, Houston's Fourteenth Court of Appeals decided a case of first impression when it decided *Solvent Underwriters v. Furmanite American, Inc.*, __ S.W.3d __, 2009 WL 280500 (Tex. App.—Houston [14th Dist.] 2009). The issue before the court was whether the insurers owed Furmanite a defense in a Louisiana toxic tort lawsuit in which Furmanite allegedly failed to monitor and warn of emissions. In its declaratory judgment action, the insurer argued that the policy did not provide coverage. The court looked at three relevant policy provisions: the pollution exclusion endorsement, the operations buyback endorsement, and the pollution buyback endorsement.

Applying the eight-corners rule, the court determined that the pollution exclusion endorsement precluded coverage. The court then proceeded to determine whether either of the buyback provisions applied. Looking to the plain language of the operations buyback endorsement, the court determined that that endorsement provides for claims-made coverage. The court noted that other portions of the policy provided for occurrence-based coverage. But, the court refused to allow the general policy provisions control over the claims-made language found in the operations buyback endorsement.

Lastly, the court looked at the pollution buyback endorsement. The court's analysis focused on the policy's use of the word "loss" in the endorsement. The policy placed several conditions for coverage on the "loss" including that it be accidental, be known to the insured with seven days, and reported in writing within 14 days of the insured's awareness of the "loss." But, the policy did not define "loss" so the court turned to the term's plain meaning. In doing so, the court refused to consider that the ordinary meaning of "loss" would include both property damage and bodily injury. Instead, the court looked only to the policy's use of the word "loss." In doing so, the court ultimately determined that it referred only to property damage and not bodily injury. In this manner, the court determined that the notice condition was only required when the claim arose from property damage, not bodily injury. By so holding, the court determined coverage applied and was not precluded by Furmanite's failure to comply with the notice provision.

HARRIS COUNTY DISTRICT ATTORNEY LOSES ARGUMENT THAT IT TAKES OWNERSHIP OF VEHICLE FRAUDULENTLY OBTAINED OVER INSURER'S TITLE IN VEHICLE OBTAINED THROUGH PAYMENT OF FRAUD POLICY CLAIM

In another case of first impression, the Fourteenth Court of Appeals addressed an insurer's superior right to ownership of a vehicle for which it had paid the dealership's fraud claim in *Universal Underwriters Group v. State*, --- S.W.3d ----, 2009 WL 196037, (Tex. App.—Houston [14th Dist.], 2009. In what the trial court called a "novel legal theory," the Harris County District Attorneys Office argued that it took superior right of possession to a vehicle seized by the Houston Police Department incident to the arrest of an individual who fraudulently obtained the vehicle through identity theft. Relying on Texas Code of Criminal Procedure 47.01a, Harris County argued it took superior right of possession of the vehicle because the dealership had been grossly negligent in allowing a nonowner to take possession of the vehicle. The insurer presented undisputed proof that it took title to the vehicle when it paid the dealership's claim for loss of the vehicle. The dealership had restored title to itself by paying the finance company in full for the lien against the vehicle obtained by the fraudulent purchase.

Noting that Harris County had no cases to support its position and that the statute did not provide definitions for its terms, the court turned to the ordinary rules of statutory construction. The court then turned to the plain meaning of the statute. In doing so, it held that the insurer held superior right of possession of the vehicle in addition to its title to the vehicle.

ABA NATIONAL INSURANCE COVERAGE CONFERENCE IN TUCSON

Coverage lawyers might be interested in the American Bar Association's National Insurance Coverage Seminar which will be held in Tucson, Arizona on March 4-7, 2009. This is the 21st annual presentation of the ABA Section of Litigation Insurance Coverage Litigation Committee CLE Seminar March 4-7, 2009 in Tucson, Arizona at the The Westin La Paloma Resort & Spa . Chris Martin from our office is one of the featured speakers this year.

This year's plenary sessions will address cutting edge coverage topics including creative coverage settlements, coverage mediation issues, written and oral advocacy errors, climate change litigation, and preparing an insurance coverage case for trial in the 21st century. In addition, this year the ABA will have a full complement of high level breakout sessions from Thursday through Saturday. There also will be receptions on Wednesday and Thursday nights, and a Friday night dinner, which will provide you with excellent opportunities to see old friends, and hopefully make new friends and contacts. Best of all, with a particular emphasis on litigation skills and emerging substantive issues, this year's CLE conference will give each attendee new tools to apply to their coverage cases.

Important Conference Information: For conference details and activity guides, visit the Insurance Coverage Litigation Committee CLE Seminar website. The program brochure is now also available online. Online registration closes **Friday, February 13, 2009. Register Now.** Don't delay in booking your rooms! Hotel registration cut-off is **Tuesday, February 3, 2009.** For reservations, call 520-742-6000 and refer to the *ABA Section of Litigation 2009 Insurance Coverage Litigation Committee CLE Seminar*.

For additional information on this national coverage seminar, please contact Jenny Langdon with the ABA at 312-988-6247.