



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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### **SAN ANTONIO COURT HOLDS BIFURCATION SUFFICIENT TO PROTECT INSURER FROM PREJUDICE CAUSED BY INTRODUCTION OF EVIDENCE OF SETTLEMENT OFFER IN BREACH OF CONTRACT ACTION**

Last Wednesday, the San Antonio Court of Appeals, sitting en banc, refused to grant mandamus relief to order the trial court to grant Travelers' motion to sever and abate the insured's extra-contractual claims. In the case of *In re Travelers Lloyds*, 2008 WL 4239493 (Tex. App.—San Antonio 2008), Traveler's paid \$1,500 to its insureds for hail and water damage on a homeowners claim. A dispute then arose as to the value of the claim when the insureds claimed additional damage to their home. When Travelers refused to pay additional amounts, the insureds sued Travelers for breach of contract and extra-contractual damages. A year after suit was filed, Travelers offered \$2,000 to settle the claim, which the insureds rejected. Travelers then moved to sever and abate the extra-contractual claims to prevent the settlement offer from prejudicing the breach of contract action. The trial court refused to order the extra-contractual claims severed and abated. Instead, on the plaintiffs' motion, the trial court ordered a bifurcated trial.

In reviewing the trial court's order for abuse of discretion, the appeals court determined the Texas Supreme Court's requirement for severance and abatement were not present because the underlying claim was covered. The court stated that the settlement offer was prejudicial to Travelers defense in the breach of contract as to the disputed portion of the claim. But, the court determined that the trial court's bifurcation order appropriately alleviated any potential prejudice.

### **HURRICANE IKE UPDATE**

Following the explosion of mass actions and class actions in Louisiana in the aftermath of Hurricane Katrina, our firm began to provide our Hurricane Insurance Litigation Newsbrief to interested individuals. We have decided to continue that tradition following last week's landfall of Hurricane Ike in Texas in an effort to keep our readers updated on the latest trends in new lawsuits, legal decisions and orders, TDI activity and orders, and other relevant news items of interest to insurers dealing with Ike issues.

Our Hurricane Ike Insurance Newsbrief is **not** automatically sent to all subscribers of our Texas Insurance Newsbrief. **If you or others with whom you work wish to receive our firm's updates of the weekly developments in claims, lawsuits and regulatory activities related to Hurricane Ike, please send a request to be added to the Hurricane Newsbrief (along with all email addresses to be added) to [tin@mdjwlaw.com](mailto:tin@mdjwlaw.com).**

Because the investigation and adjustment process for Hurricane Ike claims is just beginning, we wanted to update our readers on the orders from the Texas Supreme Court last week addressing Hurricane Ike issues as well as the status of the various courts impacted by the storm.

### **Texas Supreme Court Orders**

Last Wednesday, The Texas Supreme Court issued an order providing for extended deadlines to file pleadings and other matters because of courthouse closures and other effects from Hurricane Ike. In a separate order the Court allows Louisiana attorneys displaced by hurricane damage to work from Texas to serve clients in their home state.

In the order providing greater time for certain filings, accompanied by a per curiam opinion, the Court provides that good cause can exist if a clerk's office is closed and that courts should consider an attorney's dislocation and hardship when considering requests to expand time limits set by court rules. It notes that statutes allow alternative locations within the same judicial district to conduct judicial proceedings outside counties affected by disaster. Proceedings at these alternative locations must be by the parties' agreement and trials on the merits are excluded.

The Court's order, in effect until October 31, cautions that statutory deadlines cannot be extended if a statute does not provide for extension by rule.

In the [second order](#), the Court permits Louisiana lawyers to practice law from makeshift Texas locations for the next 30 days. It also allows out-of-state legal-aid attorneys to practice law with Texas legal-aid programs for 30 days.

### **Galveston County Information**

By Wednesday, the District Clerk will have its office open in the League City Annex (there is a courtroom there as well).

Two District Judges (Lonnie Cox and Susan Criss) are available in League City for emergency orders/matters. District Judge Jan Yarbrough and County Judge Trey Dibrell are available on Galveston Island for emergency orders/matters.

The Galveston federal courthouse is closed until further notice, and all matters will be rescheduled to Houston.

### **Beaumont Court of Appeals**

As of Friday, the Beaumont Court of Appeals was closed indefinitely.

### **Houston/Harris County Courts**

Harris County courts and the clerk are opened for normal business, except jury calls have been cancelled through September 23, 2008.

The federal courts in Houston opened for normal business this morning at 8:00 a.m. Because the Galveston federal courthouse is closed until further notice, all matters will be rescheduled to Houston.

### **Other State Court Closures in South East Texas**

Brazoria County - Courthouse closed. "Essential personnel" are the only ones allowed in the courthouse as of this morning. The Court intends to resume hearings later this week

Burleson County - Courthouse closed. All hearings last week cancelled and moved to Oct. 1st

Chambers County - Only essential hearings held last week. All hearings for this week cancelled.

Hardin County - Courthouse closed last week and no hearings were held. Hearings will resume this week.

Houston County – closed, no re-opening dates given

Jasper County - Courthouse closed last week with only essential hearings. All hearings are cancelled for this week.

Jefferson County – Courthouse closed.

Liberty County – Courthouse closed due to power.

Montgomery County – Courthouse operating on an emergency basis due to partial power.

Newton County – Courthouse closed. FEMA is using the facility at the present.

Orange County – Courthouse closed due to no power. Media reports have stated that 90% of the attorney offices in downtown Orange have had 2 to 3 feet of water in them.

Robertson County – Courthouse closed.

Trinity County – Courthouse closed due to no power.

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