The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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FEDERAL DISTRICT COURT JUDGE ANALYZES "LOCAL CONTROVERSY" EXCEPTION TO "CLASS ACTION FAIRNESS ACT" – ORDERS REMAND OF CLASS ACTION BAD FAITH SUIT

Last Tuesday, a Federal District Court Judge in the Beaumont Division of the Eastern District of Texas analyzed the "local controversy" exception to the Class Action Fairness Act ("CAFA") and found that a Texas insurer was a "significant defendant" falling within the exception which required the court to remand the class action bad faith case to state court. In *Joseph v. Unitrin, Inc.*, No. 1:08-CV-077 (E.D. Tex., August 12, 2008), bad faith class action claims were made against the carrier for claims handling activities arising out of its Hurricane Rita claims. In last week's remand order, the court's treatment of the "significant defendant" issue is one of the first in the country and could have far reaching impact on other bad faith class action cases removed under CAFA.

Plaintiffs' brought a class action lawsuit against a Texas insurer but later amended their petition adding several diverse defendants, alleging the Texas-based insurer "serves merely as a shell to offer protection to Unitrin and its subsidiaries." The insurers then removed the lawsuit to federal court and plaintiffs filed a motion to remand. Addressing the "significant defendant" prong of the "local controversy" exception to CAFA, the court found the Texas based insurer was a named defendant from whom "significant relief" is sought, whose conduct forms a "significant basis" for the claims asserted" and "is a citizen of the state in which the action was filed." As a result, the case was remanded.

COURT REJECTS PRIMARY INSURER'S CONTRACTUAL AND EQUITABLE SUBROGATION CLAIMS SEEKING RECOVERY OF OVERPAYMENT FROM EXCESS INSURER

Last Wednesday, a Federal District Court Judge in the Northern District of Texas rejected a primary insurer's efforts to recover an overpayment made in error from an excess insurer by asserting contractual and equitable subrogation theories. In *XL Insurance America, Inc. v. TIG Specialty Insurance Company*, No. 3:07-CV-1701-M (N.D. Tex., August 13, 2008), XL Insurance settled a claim on behalf of its insured mistakenly paying $125,069.08 above its remaining aggregate policy limit. It then sought recovery from TIG.

The court rejected the equitable subrogation claim stating:

> XL essentially asks the Court to find as reasonable every insurer's oversight, however unjustified or inexcusable. Adoption of such a rule would remove an insurer's incentive to carefully handle its insured's claims and generate needless corrective litigation.

Addressing the contractual subrogation claim, the court found the payment was not "made under this Coverage Part" as stated in subrogation provision of the policy, but was outside of coverage and failed to trigger a contractual right of subrogation. Accordingly, the court granted TIG's motion to dismiss the lawsuit.

FAILURE TO TRANSFER TITLE AFTER SALE DOES NOT SUPPORT NEGLIGENT ENTRUSTMENT CLAIM

Last Friday, the Austin Court of Appeals concluded that an auto dealer's failure to transfer title at the time of the sale, or to comply with Texas Certificate of Title Act, did not create a fact issue precluding summary judgment on the negligent entrustment claims against it. In *Fox-Taylor v. Auto Market, Inc.*, 2008 WL 3539992 (Tex.App.-Austin, August 15, 2008), the auto dealer re-acquired the vehicle from a previous buyer, sold it to the driver who was involved in an accident, re-acquired the vehicle after the accident and sold it again. The court concluded that the auto dealer's failure to transfer title throughout the series of transactions did not create a fact issue, or support allegations that the dealer owned the vehicle at the time of the accident, as needed to support negligent entrustment claims against it.