



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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August 4, 2008

WORKERS COMP BAD FAITH UPDATE: HOUSTON COURT AFFIRMS EXTRA-CONTRACTUAL AWARD AGAINST INSURER FOR FAILING TO CONDUCT A REASONABLE INVESTIGATION AND NOT HAVING ANY EVIDENCE TO SUPPORT THE DENIAL OF A COMP CLAIM

Last Thursday, in *Texas Mut. Ins. Co. v. Ruttiger*, No. 01-06-00897-CV, Houston Court of Appeals (July 31, 2008) (slip op.), the Houston First Court of Appeals upheld a trial court judgment against Texas Mutual, including the award of extra-contractual damages. Ruttiger sued Texas Mutual because it refused to pay his workers compensation claim until the matter was resolved by a Benefit Dispute Agreement in the administrative workers compensation system. Ruttiger contended Texas Mutual did not conduct a reasonable investigation to determine whether the payments were due, and Texas Mutual “had no objective evidence” to support its denial of his claim. Texas Mutual disputed Ruttiger’s contentions. But, Texas Mutual’s adjuster admitted he did not speak with Ruttiger or his treating physicians, and he did not see or request Ruttiger’s medical records. While the adjuster testified he tried to call Ruttiger and sent letters to him, Ruttiger denied receiving any calls or letters and testified the adjuster hung up on him when Ruttiger tried to call him.

The court of appeals upheld the jury verdict finding Texas Mutual engaged in unfair claims settlement practices. The court of appeals also upheld the jury verdict finding a “knowing” violation of the Texas Insurance Code. The jury’s award of damages for physical pain and suffering, physical impairment, and mental anguish was also upheld. The court did reverse the jury’s award for loss of credit reputation because Ruttiger did not present any evidence that he was denied credit or charged a higher interest rate.

DALLAS COURT FINDS PROPERTY ENDORSEMENT FOR SEWER BACK-UP UNAMBIGUOUS AND ANCILLARY CLAIMS FOR BUSINESS LOSSES ALSO FALL WITHIN ITS LIMITS

In a case of first impression, *For Kids Only Child Dev. Cntr., Inc. v. Philadelphia Indem. Ins. Co.*, Cause No. 05-07-00546-CV, Dallas Court of Appeals (July 25, 2008)(slip opinion), the Dallas Court of Appeals determined a special endorsement extending coverage for back-up of sewers from flood damage in an endorsement entitled “Elite Property Enhancement” was unambiguous. The endorsement provided \$25,000 additional coverage for sewer back, which the policy excluded. When Kids Only suffered a sewer back-up, Philadelphia paid the \$25,000 limits under the endorsement. Kids Only contended its entire loss of \$151,888.27 was covered, arguing the endorsement and exclusions created an ambiguity. The Dallas court rejected Kids Only’s argument, holding the endorsement and exclusion did not create an ambiguity when read together. The court also rejected Kids Only’s claim that the endorsement sublimit

did not apply to its claim for loss of income and business interruption. In addressing this claim, the court found these were ancillary to the direct damage and the endorsement's sublimit also applied to these.

INSURER WINS TURNOVER ORDER AGAINST LAWYER FOUND TO HAVE PARTICIPATED IN INSURANCE FRAUD SCHEME

On Monday, State Farm won a turnover order against Raphael V. Wilkins to reach Wilkins's shares in his law practice, and Wilkins's contingent-fee interests. In *State Farm Mut. Auto. Ins. Co. v. Wilkins*, No. H-99-2822, U.S. Dist. Ct. Houston Div. (July 28, 2008) (slip op.), the court appointed a receiver and master in chancery to oversee the turnover order. State Farm won a money judgment against Wilkins, and others, for their participation in a "sudden-stop" collisions insurance fraud scheme. Wilkins filed for bankruptcy in the midst of the lawsuit, and State Farm's action proceeded in bankruptcy court where it eventually won a judgment for \$1.8 million in actual damages and \$1 million in punitives against each defendant. The court cited Wilkins's "inconsistent and evasive accounts of his ownership and involvement with his law firm" as the basis for its decision to appoint a receiver and master in chancery.

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