The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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July 14, 2008

U.S. SUPREME COURT FINDS HEALTH PLAN ADMINISTRATOR'S DUAL ROLE OF BOTH EVALUATING AND PAYING CLAIMS CREATES "CONFLICT OF INTEREST"

In what could be a far reaching and significant decision for insurers, the Supreme Court of the United States recently held that an insurer serving as a plan administrator that both evaluates and pays disability/health benefits claims has a "conflict of interest" that should be weighed as a factor in determining whether there has been an abuse of discretion in reviewing their decisions. In *Metropolitan Life Insurance Co. v. Glenn*, 128 S.Ct. 2343 (June 19, 2008), an employee sought disability benefits under her employer's benefit Plan administered by Metropolitan Life. The Plan gave Metlife discretionary authority (as the administrator) to determine the validity of claims and it also provided that Metlife (as the insurer) will pay claims.

An employee sought and was awarded disability benefits and was then encouraged by Metlife to pursue Social Security disability benefits, which ultimately were paid to the Plan. But when the Social Security Administration determined the employee was permanently disabled, Metlife disagreed and denied further benefits. The District Court denied relief but the Sixth Circuit used a deferential standard of review, found a conflict of interest in Metlife's dual role of both evaluating and paying claims and, based on a combination of the conflict and other circumstances, it set aside Metlife's benefits denial.

The Supreme Court of the United States agreed with the Sixth Circuit and held when the dual role is combined with the other factors in this case such as encouraging successful recovery of Social Security benefits to Metlife's benefit, but then ignoring the Social Security Administrations findings when contrary to their own, and also emphasizing medical reports that supported a denial of benefits while de-emphasizing others that would lead to a contrary conclusion, were "serious concerns" that supported the decision to set aside Metlife's discretionary decision.

BYSTANDER'S PHYSICAL MANIFESTATIONS OF EMOTIONAL DISTRESS ARE "BODILY INJURY" INJURY UNDER UM/UIM COVERAGE

Last Tuesday, the a Federal District Court in Dallas took an *Erie*-guess as to whether emotional distress accompanied by physical symptoms was sufficient to trigger underinsured motorist coverage under an auto policy. In *Haralson v. State Farm Mutual Auto. Ins. Co.*, 2008 WL 2651387 (N.D.Tex. July 8, 2008), a car ran a red light and struck Fred Haralson's vehicle. His wife was following his vehicle in another vehicle and witnessed a collision. The responsible driver's liability insurer paid its per-person policy limits to Fred Haralson and most of a separate per person limit to his wife. State Farm also paid it's per person underinsured motorist limit to Fred Haralson but denied the wife's claim asserting they she had not suffered "bodily injury" as required to trigger UIM coverage.

The Federal District Court observed that the Texas Supreme Court had never decided whether physical manifestations of emotional distress constitute "bodily injury" sufficient to trigger auto insurance coverage. And, after reviewing decisions from other courts, the Court concluded that it did. Then, applying its ruling to the damages awarded, the Court found $25,000 in compensatory damages was recoverable under the UIM coverage by the wife as arising from the "bodily injury." The $15,000 for loss of consortium and $1,000 for loss of household services, however, were held not to be "bodily injury" as used in the insurance context and were not covered under the UIM coverage. Lastly, the Court held State Farm was entitled to an offset equal to the full amount of the liability insurer's per-person policy limit despite the fact the wife settled for less than that amount.

MDJ&W CONGRATULATES STATE FARM AND AAA-TEXAS ON SIGNIFICANT TRIAL WINS IN HARRIS COUNTY

Founding partners Christopher W. Martin and David D. Disiere each separately tried first party cases in June for State Farm and AAA-Texas in two separate Harris County lawsuits and they secured defense verdicts in both. On behalf of State Farm, Chris Martin joined Chris Diamond with the law firm of Cooper, Sprague, Jackson & Boanerges, P.C. in successfully defending a auto property damage claim with bad faith allegations of a sham investigation and an improper denial. In R*ichard Crounse v. State Farm Mutual Automobile Insurance Company*; in the 215th Judicial District Court of Harris County, the defense team presented the proper nature of State Farm's investigation which supported its claim conclusions and its decision on the claim. The defense team also exposed the insured's neglect in maintaining the vehicle and apparent self-dealing by a mechanic who declared that the engine needed to be replaced, bought the vehicle from the insured for salvage and then sold it for profit without replacing the engine. MDJ&W congratulates State Farm for its willingness to try this case and recognizes the efforts of trial team including co-trial counsel Chris Martin and Chris Diamond as well as associate Rebecca Moore and paralegal Cynthia Glenney for their efforts in securing this win for State Farm.

On behalf of AAA-Texas, David Disiere and Jamie Cooper defend AAA-Texas in June in a suspected arson case involving a fire loss to the insured's dwelling which implicated the common law arson defense and the insured's violation of the fraud and concealment provision under the policy. In *Charles D. Russell v. Interinsurance Exchange of the Auto Club and Vanessa Chapa;* in the 80th Judicial District Court of Harris County, the plaintiff, a 27 year Houston Police Officer, sued AAA-Texas after it denied his claim based on suspected arson and breach of policy conditions. Even though AAA's cause and origin expert found the cause of the fire to be "undetermined," AAA-Texas' investigation, including an EUO by attorney Ron Pfieffer, supported the denial of Russell's claim. After suit was filed, the bad faith claims were successfully disposed of on summary judgment and, at trial in June, the jury found the insured breached the policy's fraud and concealment condition resulting in a defense win. MDJ&W congratulates AAA-Texas for its willingness to try this case, and also appreciates the great efforts of the trial team consisting of partner David Disiere, senior counsel Jamie Cooper and paralegal Gregg Girvan in securing this significant win for AAA-Texas.