



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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HURRICANE IKE MDL MOTIONS GRANTED

Last Wednesday, the Texas Supreme Court's MDL panel granted State Farm Lloyd's motion to transfer Hurricane Ike cases to an MDL court under Rule 13. *In Re State Farm Lloyds Hurricane Ike Litigation*, 12-0156, Order Of Multidistrict Litigation Panel (April 25, 2012.) The panel also granted Cypress Texas Lloyd's motion. *In Re Cypress Texas Lloyds Hurricane Ike Litigation*, 12-0230, Order Of Multidistrict Litigation Panel (April 25, 2012.) The panel also granted National Lloyd's Insurance Company's motion. *In Re National Lloyds Insurance Company Hurricane Litigation*, 12-0248, Order Of Multidistrict Litigation Panel (April 25, 2012.) In all three orders, the MDL panel stated that an opinion would issue at a later date. Earlier this week, Judge Mike Miller (11th District Court of Harris County) was appointed as the presiding judge for these 3 MDLs and the stays were lifted. Judge Miller has been overseeing the Hurricane Ike insurance cases in Harris County for the past 3 years.

NO WAIVER OF RIGHT OF TO APPRAISAL WITHOUT SHOWING OF PREJUDICE

Last Thursday, the Beaumont Court of Appeals conditionally granted a writ of mandamus, compelling a trial court to order the parties to appraisal as requested by the insurer. *In re Cypress Texas Lloyds*, --- S.W.3d ---, 2012 WL 1435739 (Tex.App.—Beaumont April 26, 2012.) In this homeowners dispute, the homeowner sued Cypress Texas Lloyds. In response to the lawsuit, "Cypress pleaded the failure to submit to the appraisal process and requested abatement in its original answer and in a series of amended answers. Cypress subsequently moved to compel appraisal." The trial court denied the motion to compel and Cypress filed a petition for writ of mandamus. The homeowners argued Cypress waived its right to appraisal because it unreasonably delayed requesting the appraisal. The Beaumont Court of Appeals rejected the homeowners' argument because the homeowner did not show it was prejudiced by Cypress' failure to request appraisal.

BREACH OF CONTRACT CLAIM NOT SUPPORTED BY SWORN PROOFS OF LOSS ALLOWS INSURER TO AVOID BREACH OF CONTRACT SUMMARY JUDGMENT

Last Wednesday, U.S. Fire won reversal of summary judgment for a policyholder on the issue of "whether property damage to two apartment complexes in Austin, Texas was caused by one hail storm or two separate hail storms in the spring of 2006." *U.S. Fire Ins. Co. v. Lynd Co.*, --- S.W.3d ---, 2012 WL 1430541 (Tex.App.—San Antonio April 25, 2012.) Lynd sued its primary carrier and its excess carrier for breach of contract and extra-contractual claims for failure to pay its property damage claim. The trial

court granted summary judgment for Lynd. On appeal, U.S. Fire argued that summary judgment was improper and not supported by the evidence. In reversing the summary judgment and allowing U.S. Fire to continue to defend the lawsuit, the court relied on the sworn proofs of loss submitted with the claim. The sworn proofs of loss submitted with the claims did not support the basis for Lynd's recovery – they identified a different cause of loss. The court found that the sworn proofs of loss were “prima facie evidence” of the facts recited and that U.S. Fire was entitled to rely on them to avoid summary judgment.

MDJW SOUTH TEXAS INSURANCE SEMINAR - MAY 11 AT THE HOUSTON CLUB



Martin, Disiere, Jefferson & Wisdom
UNIVERSITY

Adjusters, claims managers, litigation managers, and in-house counsel should mark your calendars for the 2012 MDJW South Texas Insurance Seminar which will be held in downtown Houston on **Friday, May 11th at the Houston Club from 9:30 a.m. to 4:00 p.m.** This FREE program will feature some of the state's leading insurance lawyers from our firm who will be providing updates on the latest decisions and latest legal trends across multiple liability and property topics including Stowers problems, inadequate limits issues, primary and excess conflicts, bad faith update, appraisal issues, construction defect coverage, homeowners and auto update, and much more. Chris Martin, Dale Jefferson, David Disiere, Kenni Lucas, Andrew Schulz, Mark Dyer and several other partners in the firm will teach on cutting edge issues impacting those who handle claims or insurance litigation in Texas. 6 hours of CE and CLE credit will be provided. Lunch will be provided as well.

To register, please send an email with your name, employer, and work address to: ce@mdjwlaw.com OR call 713-632-1737 with the same information. Following receipt of a registration request, we will reply with more detailed information regarding the location of The Houston Club and the program. We hope to see many of our friends from the insurance industry on May 11th in Houston!

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom, L.L.P.
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