



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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**INSURANCE COMPANY BARRED FROM RECOVERY AGAINST NEGLIGENT
BROKER, COURT REJECTS ARGUMENTS THAT BROKER'S NEGLIGENCE
"UNDISCOVERABLE"**

On Thursday, in *TIG Insurance Company v. Aon Re, Inc.*, 2008 WL 667423 (5th Cir. March 13, 2008), a three-judge panel of the Fifth Circuit held that the statute of limitations barred TIG's claims against its broker for losses it incurred when its reinsurer successfully rescinded the reinsurance treaty that Aon Re had found on TIG's behalf. Looking at Texas law, the panel determined that the injury occurred when its reinsurance contract, which was based on the inaccurate information from Aon Re, with US Life was consummated. The panel also examined the discovery rule, and held that it applied to TIG's claim against Aon Re. But it determined that the evidence showed that TIG's management suspected a problem with Aon Re's work because the US Life bid on the reinsurance treaty was much lower than all other bids received. TIG argued that it had to conclude contractually-required arbitration with US Life before it could bring suit against Aon Re. The panel disagreed, pointing to the Texas Supreme Court's decision in *Murphy v. Campbell*, 964 S.W.2d 265 (Tex.1997), and instructing that the proper course was to bring the suit against Aon Re and abate it while the arbitration pended. TIG also argued that, because Aon Re owed a fiduciary duty to it, its claims against Aon Re should not be barred by limitations because a fiduciary's negligence is inherently undiscoverable. While the panel agreed with the proposition of law, the panel held that TIG did not sufficiently rely on Aon Re to justify the imposition of the fiduciary standard. Lastly, the panel refused to permit TIG to pursue a common-law indemnity theory against Aon Re.

**BEAUMONT COURT HOLDS PAYMENT ON DISPUTED CLAIM NOT
SETTLEMENT OFFERS, BUT PAYMENTS FOR COVERED LOSSES UNDER
THE POLICY, INSUFFICIENT TO SUPPORT A MOTION TO SEVER AND
ABATE**

Also on Thursday, the Beaumont Court of Appeals refused to grant a writ of mandamus to compel the trial court to grant Acceptance's motion to sever and abate the extra-contractual claims in *In Re Acceptance Indemnity Insurance Company*, 2008 WL 659438 (Tex. App.—Beaumont March 13, 2008). Acceptance sought the writ under the Texas Supreme Court's opinion in *Liberty Nat'l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 630 (Tex.1996), which held that severance and abatement is warranted when the insurer makes a settlement offer on a disputed contract claim or when there are other extenuating circumstances. Acceptance argued that its payments on the claim, initially and through

supplements after the dispute arose, constituted settlement offers which were accepted. Ware argued that the payments were only for undisputed covered claims, and disputed contract claims remain. The Beaumont court agreed with Ware that Acceptance had not made settlement offers, but merely paid covered claims. The court found that the record before it was inadequate to consider Acceptance's argument that discovery on the extra-contractual claims needed to be abated to protect privileged documents. The court also determined that the record was inadequate to consider if the contractual claims were dispositive of the extra-contractual claims so as to justify severance and abatement. The court also noted that some of Acceptance's concerns had been addressed because the trial court had already granted Acceptance's motion to bifurcate the trial.

MDJ&W UNDERWRITES UNIVERSITY OF HOUSTON LAW FOUNDATION'S ADVANCED INSURANCE AND TORT CLAIMS SEMINAR

Partnering with the University of Houston Law Foundation, Martin, Disiere, Jefferson & Wisdom is Chairing this years Advanced Insurance & Tort Claims seminar to be held live in Dallas on April 10-11 and in Houston on April 17-18, and by video in Austin on May 29-30, 2008. Founding partner David D. Disiere is serving as Course Director and the seminar has once again gathered together some of Texas best insurance law practitioners and speakers to present timely and interesting discussions of recent developments in Texas insurance and tort law. The two day seminar also provides 12 hours CE credit including 2 hours consumer protection for adjusters. The University of Houston is offering insurance professionals attending as our guests a significant discount off of the registration fee. To make arrangements to attend as our guest, e-mail us at uhlawsseminar@mdjwlaw.com with your contact information and let us know the city where you would like to attend. We will then get back with you to get you on our invitee list. For more information, the course brochure may be viewed at www.mdjwlaw.com/docs/advins08.pdf. We hope to see your there!

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