The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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APPELLATE COURT AFFIRMS RULING THAT COSTS FOR DEFECTIVE REPAIRS WERE NOT COVERED UNDER APPELLANT'S PERSONAL AUTO POLICY

Last Tuesday, the Houston Fourteenth Court of Appeals held an arbitration award that included costs for defective repairs was not proper. In *Walker v. Travelers Indem. Co.*, 2008 WL 123869 (Tex. App.—Houston [14th Dist.] January 15, 2008), appellant sustained damages to her brand new vehicle when a tree fell on it during a rainstorm. The total estimate to fix her vehicle was $16,902.08. The auto carrier paid this amount. When the body shop performed the repairs, however, the vehicle was not returned to its pre-accident condition, and appellant requested additional benefits. The carrier refused and appellant sued for breach of contract and extra-contractual claims.

Appellant then invoked her right to an appraisal pursuant to her personal auto policy. The umpire awarded appellant her original estimate plus $8,275.44 for the faulty repairs. Appellee successfully challenged the award arguing the additional amount awarded over and above the estimate was not covered under the policy.

FEDERAL COURT RULES WATER EXCLUSION APPLIES TO BAR COVERAGE FOR WATER DAMAGE TO LAW FIRM BUILDING

Recently, a federal judge held a water exclusion contained in a Business Owners Property Coverage form barred coverage for damage to Plaintiff's building. In *Claunch v. The Travelers Lloyds Ins. Co.*, 2008 WL 114844 (N.D. Tex. January 10, 2008), the court found water damage to Plaintiff's building was caused due to a clogged sump pump or by water which traveled under the exterior basement door, or both. Plaintiff argued all of the water came from the overflow of the sump pump, resulting from the malfunction of the pump. The court agreed with the carrier that the origin of the water did not matter because the exclusion barred coverage under either theory. Because Plaintiff failed to show the claim was covered, his allegation of bad faith was also dismissed.

APPELLATE COURT HOLDS CARRIER DID NOT BREACH ITS CONTRACT WITH INSURED BY DENYING COVERAGE FOR MOLD

Last week, the Houston Fourteenth Court of Appeals held State Farm did not breach a contract with its insured after it denied coverage for a mold claim. In *Justice v. State Farm Lloyds Ins. Co.*, 2008 WL 123857 (Tex. App.—Houston [14th Dist.] January 15, 2008), the insureds made a claim under their State Farm homeowner's insurance policy after a tree fell on their home. State Farm paid the claim. Later, the

insureds discovered mold in the walls of their home and reported the claim to State Farm. After issuing a reservation of rights letter, State Farm contracted with a third-party vendor to remediate the home for $137,000. Thereafter, the insureds filed suit for additional mold damage. Both sides filed a motion for summary judgment.

State Farm argued the breach of contract claim was barred by the mold exclusion in the policy. The insureds allege the mold exclusion is trumped by a provision of the State Farm Adjuster's Guide, purportedly stating if the original claim is covered, such as the damage from the wind blown tree, then any loss that proximately results is therefore covered. The insureds, however, failed to provide any legal authority for their position and, as a result, waived any basis for relief on that contention.

The appellate court also summarily dealt with the insureds' other issues such as extra-contractual claims and negligence on the basis the insureds provided no basis to contradict the trial court's ruling. Importantly, the court reiterated the principle that Texas does not recognize a claim for negligent claims handling. Lastly, to the extent the third-party contractor was hired by State Farm to identify mold damage that could be covered under the policy, the court ruled the insureds response does not articulate a duty owed to them by the contractor or how its failure to identify the mold could have caused them damage if it was not covered under the policy.

The appellate court also issued an instructive concurring opinion which held the mold provision was not ambiguous and the court was restricted to the eight corners and should not consider extrinsic evidence such as the Adjuster's Guide in its coverage analysis. The concurrence also recognized dictum offered by the Fifth Circuit in *Higganbotham v. State Farm Auto Ins. Co*. that "Texas law does not recognize a cause of action for negligent claims handling" was a matter of first impression for the court (and Texas Supreme Court) and was not binding authority. Instead of dealing with this issue, however, the court passed on the analysis.

Editor's note: Our law firm had the honor of working on this appeal on behalf of State Farm. We will continue to monitor cases that deal with the issue of mold as well as claims for negligent claims handling. If you have any questions related to this opinion, please contact any of our attorneys for additional information.

2008 TEXAS INSURANCE LAW SYMPOSIUM THIS WEEK IN HOUSTON

This Thursday and Friday, January 24 and 25, the South Texas College of Law will host its 10th annual Texas Insurance Law Symposium in Houston. This program is being chaired again by Chris Martin and features many of the state's leading insurance lawyers. In addition to 2 days of CLE credit, CE credit has been obtained from the Texas DOI. For more information, please see http://www.stcl.edu/cle/TXINSR2008schedule.html.