The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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STATEMENT TO INSURANCE INVESTIGATOR SUFFICIENT TO SUPPORT INSURANCE FRAUD CONVICTION

Houston's First District Court of Appeals has held that an insured's statement to his insurer's fire investigator that the insured was "not aware of anyone wanting to intentionally set a fire" was sufficient to support criminal conviction for insurance fraud. In *Marcus v. State*, 2007 WL 3293621 (Tex. App.—Houston [1st Dist.] November 8, 2007, Marcus was convicted of arson and insurance fraud. In addition to financial difficulties and a recently purchased policy, four witnesses testified that Marcus contacted them about finding someone to arrange a fire at his business. Marcus appealed his conviction for insurance fraud, arguing that his statement to the insurance investigator was not a "communication … evidencing a loss, injury, or expense" as required by Texas Penal Code sec. 35.01(5). The court was not persuaded by Marcus's argument, finding that the statement was sufficient to support the conviction. The court also noted that the recently amended version of the statute does not require that the statement "evidence a loss" but merely present false information to an insurer.

COLLATERAL SOURCE RULE DOES NOT BAR EVIDENCE OF PROCEEDS OF INSURANCE POLICY PURCHASED BY DEFENDANT

In *Imperial Lofts, Ltd. v. Imperial Woodworks, Inc.*, 2007 WL 3293661 (Tex. App.—Waco, November 7, 2007), the building owner sued a tenant and the tenant's contractor for negligence related to a fire that completely destroyed the building. The tenant had obtained a fire insurance policy as required by the lease agreement, and the owner received all of the insurance payments. The policy initially paid $384,313.72 on the claim, and the insurer later paid another $600,000 to settle a coverage suit brought on the policy. The Waco Court of Appeals determined that the tenant's fire insurance policy's payments were appropriate credits against the jury's verdict and were not subject to the collateral source rule. The court held that the tenant was entitled to a settlement credit for the entire $984,313.72 in insurance payments against the jury's $535,000 damage finding, resulting in a take-nothing judgment for the owner.

HOUSE PASSES HR335 – HOMEOWNERS DEFENSE ACT OF 2007 FEDERAL DISASTER INSURANCE MEASURE

On November 8, 2007, the U.S. House of Representatives passed legislation to create a pool for state-sponsored insurance funds to voluntarily bundle their catastrophe risks with one another, and then transfer that risk to the private market through the use of catastrophe bonds and reinsurance contracts. While the bill provides for private response to the risk, the bill also provides for federal loans that could be extended to any state that faces a significant financial shortfall following a natural catastrophe. A similar bill was introduced in the U.S. Senate on November 7, 2007. On November 6, 2007, the OMB released a Statement of Administrative Policy which states that the Administration does not support the measure because it would create a "federal subsidy" of state catastrophe risks.

FIFTH CIRCUIT RULES ON SIGNIFICANT HURRICANE KATRINA ISSUES -- MISSISSIPPI HOMEOWNER'S POLICY UNAMBIGUOUS AND POLICY PROVISIONS OVERRIDE MISSISSIPPI'S EFFICIENT PROXIMATE CAUSE DOCTRINE

In *Tuepker v. State Farm*, 2007 WL 3256829 (5th Cir. (Miss.), November 06, 2007), an interlocutory appeal of State Farm's motion to dismiss plaintiffs' Hurricane Katrina lawsuit, a three-judge panel ruled on State's Farm's water damage exclusion and anti-concurrent-causation clause in its homeowners policy in Mississippi and also considered the policy's interaction with Mississippi's efficient proximate cause doctrine. The court upheld the trial court's rulings as to the water damage exclusion. Plaintiffs argued damages caused by storm surge were not excluded by the water damage exclusion. But the court held the water damage exclusion was valid under Mississippi law and it includes storm surge. Regarding the anti-concurrent-causation clause, the court held the clause is not ambiguous and not in conflict with any other policy provision. Lastly, sitting as an *Erie* court, the panel determined the policy "overrides the efficient proximate cause doctrine." The plaintiffs had argued the efficient proximate cause doctrine prevents enforcement of the policy's anti-concurrent-cause clause. The court refused, however, to reach the issue of burden of proof regarding the applicable policy provisions. The court did so because the parties had entered into a high-low settlement agreement, which the court construed to mean that no further litigation would take place in this case rendering the remaining issue not relevant. This is a very significant ruling that will impact many pending Katrina cases in Mississippi and possibly in Louisiana as well.

FIRM HELPS LAUNCH *NATIONAL INSURANCE LAW FORUM*

Chris Martin and four nationally prominent insurance lawyers have launched the National Insurance Law Forum – an internet domain designed for the timely exchange of information of interest to executives and in-house counsel within the insurance industry concerning significant recent legal decisions, legal and regulatory trends, coverage and bad faith exposure issues, and other items of interest to those who manage claims or lawsuits for insurers. The Forum has a national focus and reports on key developments, decisions, and trends in those jurisdictions which are likely to be of interest to executives and in-house counsel regardless of where they focus their particular work efforts. The *Forum* can be located at: http://www.insurancelawforum.com.