The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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TEXAS SUPREME COURT HOLDS THAT ORAL SETTLEMENT AGREEMENTS ARE UNENFORCEABLE UNDER RULE 11

In a per curiam decision, the Texas Supreme Court refused to allow a plaintiff to pursue enforcement of an oral settlement agreement. In *Knapp Medical Center v. De La Garza*, 2007 WL 3230144 (Tex. November 02, 2007), De La Garza made a policy limits demand against Knapp, which Knapp's insurer accepted. De La Garza understood, however, that Knapp would contribute an additional amount to the policy limits. Knapp disputed that any agreement existed to contribute an additional amount. At a hearing before the trial court, the parties entered the policy limits agreement into the record. And the trial court allowed De La Garza to reserve any rights he might have to pursue Knapp for the additional amount. De La Garza then sued Knapp for breach of contract for refusing to pay the additional amount, and he won a judgment against Knapp in a bench trial. The Texas Supreme Court reversed and rendered a take-nothing judgment against De La Garza.

HOMEOWNER'S POLICY'S RECREATIONAL VEHICLE EXCEPTION TO MOTOR VEHICLE EXCLUSION UNAMBIGUOUS BUT PLAINTIFFS ESCAPED SUMMARY JUDGMENT THROUGH APPLICATION OF EIGHT-CORNERS RULE

In a case of first impression, the Fort Worth Court of Appeals held that the recreational vehicle exception to the motor vehicle exclusion is unambiguous in *Gomez v. Allstate Texas Lloyds*, 2007 WL 3203112 (Tex. App.—Fort Worth, November 1, 2007). The Plaintiffs, whose son was injured while riding the insured's four wheeler, failed to convince the Court that the exception was ambiguous. But the Court reversed and remanded a summary judgment granted to Allstate under a pure application of the eight-corners rule. Allstate moved for summary judgment relying on only the live petition and the policy language. And, under the eight-corners rule's liberal construction of the allegation, the Plaintiffs were rewarded for their failure to plead sufficient facts in their petition for the Court to determine the appropriate application of the policy language.

COURT AFFIRMS NO-EVIDENCE SUMMARY JUDGMENT IN MOLD CLAIM

Houston's First Court of Appeals affirmed a no-evidence summary judgment granted on a mold claim in *Tellez v. Allstate Texas Lloyds*, 2007 WL 3146731 (Tex. App.—Houston [1 Dist.], October 30, 2007). Allstate moved for summary judgment alleging that the plaintiff had no evidence linking any mold in her home to a peril and loss covered by the policy. The court found that Tellez failed to identify evidence of damage and causation, apply the applicable law to those facts, and then explain the resulting reasoning.

MDJW INSURANCE TEAM WINS $5 MILLION EQUITABLE SUBROGATION CLAIM

Firm partners Chris Martin and Brad Allen were victorious last week when a federal jury in Dallas rejected the $5 million equitable subrogation claims of two excess liability insurers who sued the firm's client, St. Paul Fire & Marine Ins. Co., for alleged *Stowers* violations for failing to settle claims against their insured when given an opportunity to do so. The insured trucking company was originally sued in a tort case in Beaumont for injuries to an off-duty police officer arising out of an accident involving one of the insured's trucks. In June 2004, Joe Jamail and Walter Umphrey recovered more than $16 million on behalf of their injured client in *Bradley Turpin v. USA Truck, Inc. and David Elie*, in the 172nd Judicial District Court of Jefferson County, Texas. Contemporaneous with the settlement of that case, the excess liability insurers responsible for paying $5 million of the judgment, Continental Casualty Company and First Specialty Insurance Corporation, sued St. Paul Fire & Marine alleging St. Paul failed to settle the case within its policy limits when it had a reasonable opportunity to do so. St. Paul contended it was not in control of the underlying litigation, it followed the wishes of its insured which refused to tender its $2 million self-insured retention, and the insured Defendant had threatened to sue it for bad faith if it attempted to settle the tort case. The jury found that our client did not breach any duty to settle and Plaintiffs recovered nothing on their equitable subrogation claim.