The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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FIFTH CIRCUIT SUGGESTS NEW CAUSE OF ACTION COMBINING EXTORTION AND FRAUD MAY BE REQUIRED TO COMBAT INSURANCE FRAUD PERPETRATED BY MEDICAL PROVIDERS

In *Allstate Ins. Co., et al v. Receivable Finance Co., LLC*, 2007 WL 2729468 (5th Cir., September 20, 2007), the Fifth Circuit stated that it was "deeply shocked and saddened at the dishonest practices of many of the defendants as reflected by the evidence, as well, apparently, as of the lawyers with whom they worked." Allstate and the other insurers' developed the evidence referred to by the court while investigating Accident & Injury Pain Centers, Inc. and various individuals and entities involved with these chiropractic clinics that specialize in treating patients who have suffered trauma in automobile accidents or through on-the-job injuries. Despite its reaction to the evidence, the Fifth Circuit reversed a $6.1 million judgment awarded to the insurers and rendered judgment for the defendant medical providers. The court held the jury's common law fraud finding was not supported by sufficient evidence of actual reliance because the insurers "could have, but did not, introduce the testimony of adjusters (or other similar agent or employee) who in fact worked on some significant number of the 1,800-plus claim files at issue, to say that they relied on the medical claims submitted in deciding to settle a claim." The court also found that the insurers' damage model, a statistical study of a sampling of the claims, was based on conjecture and speculation, and was, therefore, insufficient to support the jury's verdict. Notably, the court refused to create a new cause of action to address the claims but suggested that the Texas state courts or the Texas Legislature could create "some blend of extortion and fraud" to address the situation. Instead of remanding for a new trial, the court rendered judgment for the defendant medical providers finding that further proceedings were unwarranted because the insurers had had a full and fair opportunity to present the case.

FEDERALLY PRESCRIBED FORM ENDORSEMENT MCS90B DOES NOT PROVIDE COVERAGE FOR BUS ACCIDENT IN MEXICO

In a case of first impression, in *Lincoln Gen. Ins. Co. v. Morquecho*, 2007 WL 2743166 (5th Cir., September 21, 2007), the Fifth Circuit determined that MCS90B did not provide coverage for a bus accident in Monterrey, Mexico, on route from Houston to Celaya, Mexico. After referring to the endorsement's plain language, the court determined it was required by the endorsement's language to consider the requirements of Section 18 of the Bus Regulatory Reform Act of 1982 (codified at 49 U.S.C. Sec. 31138(a)) in order to determine the endorsement's coverage. The court determined Section 18 established minimum levels of financial responsibility for the transportation of passengers by commercial motor vehicle "in the United States" even if the vehicle may be transporting passengers outside the United States.

JURISDICTIONAL ABATEMENT CANNOT BE LIFTED FOR LIMITED PURPOSE OF CONDUCTING DISCOVERY

The Waco Court of Appeals conditionally granted a writ of mandamus in *In re American Cas. Co. of Reading, Penn.*, 2007 WL 2729593 (Tex. App.—Waco September 19, 2007), compelling a trial court to vacate an order permitting discovery in a bad faith insurance lawsuit that had been abated while the plaintiffs exhausted their administrative remedies through state Workers' Compensation Division. The court recognized that the abatement was based on the district court's lack of jurisdiction for any purpose, including the limited purpose of discovery, while the plaintiffs exhausted their administrative remedies before the Comp Division.