The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
www.mdjwlaw.com
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

July 23, 2007

COURT HOLDS REINSURANCE CLAIM IS NOT A "FIRST PARTY CLAIM" UNDER TEXAS PROMPT PAYMENT OF CLAIMS ACT

As a matter of first impression for Texas courts, a U.S. District Court in the Southern District of Texas recently concluded that Texas Insurance Code Chapter 542, Texas Prompt Payment of Claims Act (formerly Art. 21.55) did not apply to reinsurance claims. In *Houston Casualty Co. v. Lexington Insurance Company*, No. H-05-1804 (S.D.Tex. June 25, 2007), Houston Casualty Company (HCC) was successful in pursuing its breach of contract action against Lexington after Lexington refused to pay a reinsurance claim. Then Houston Casualty sought recovery of penalties and interest under Chapter 542 arising from Lexington's wrongful denial and delay in payment.

The court analyzed the nature of reinsurance and determined that the agreement qualifies as a "policy of insurance" as required under Chapter 542. But, Chapter 542 defines a "claim," in part, "as a first-party claim made by an insured or a policyholder under an insurance policy or contract…." The court recognized a current split in authority as to whether a demand for a defense under a liability policy is a first party claim and the Supreme Court of Texas has accepted a certified question to address this issue. There was no Texas authority, however, addressing "whether a reinsurance policy claim is a first party claim within the meaning of the prompt payment statute." After considering the purpose of the statute, the nature of the policy, and reinsurance in general the court concluded that "HCC's claim against Lexington pursuant to its policy of reinsurance is not a first party claim within the reach of article 21.55" and dismissed the claim with prejudice.

COURT REJECTS PREJUDICE REQUIREMENT UNDER CLAIMS-MADE POLICY, REVERSES JUDGMENT IN FAVOR OF INSURED

Recently, a U.S. District Court in the Eastern District of Texas reversed a jury verdict in favor of an insured under a claims-made medical liability policy, finding that while a loss run provided "notice of the claim," the insured failed to provide timely "notice of the lawsuit," a condition precedent for coverage, and rejected arguments that the insurer had waived that requirement. In *East Texas Medical Center Regional Health Care System v. Lexington Insurance Company*, No. 6:04-CV-165 (E.D.Tex. July 12, 2007), the court found that while Lexington may have waived the "notice of claim" requirement, that waiver finding had no impact on the requirement that the insured provide timely "notice of the lawsuit," "a condition precedent that could not be waived."

The court also rejected the insured's argument that prejudice was required under a claims-made policy to properly deny coverage based on late notice. And the court rejected efforts to distinguish the policy

from “claims-made and reported” policies finding that no Texas courts have recognized the distinction and that the Fifth Circuit has previously rejected it. Accordingly, the jury verdict in favor of the insured was reversed and judgment entered in favor of Lexington as a matter of law.

DISMISSAL OF EMPLOYEE’S CLAIMS AGAINST INSURER ARISING FROM EMPLOYER’S INSURANCE ON HIS LIFE – UPHELD

Last Tuesday, the Fifth Circuit held that a trial court’s dismissal of a putative class action against the insurer, by former employees on whose lives the corporation had purchased life insurance for the employer’s benefit, was properly dismissed for failure to state a claim. In *Meadows v. Hartford Life Insurance Company,* 2007 WL 2039067 (5th Cir. (Tex.) July 17, 2007), the court examined and upheld the dismissal of claims asserting “misappropriation of his name or identity, based on personal information that was used to obtain these policies, for participation in breach of fiduciary duty, and for civil conspiracy.” In addressing the claims, the court found that the misappropriation of the employee’s name and identity failed absent allegations that the employer’s actions prevented the employee from obtaining life insurance or reduced the value of his identity. Also, under Texas law the mere existence of an employee/employer relationship does not create a fiduciary duty. Lastly, under Texas law, civil conspiracy is a derivative tort and because the employee could not state an underlying tort claim, his civil conspiracy claim against the insurer was properly dismissed.