The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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UNITED STATES SUPREME COURT AFFIRMS VALIDITY OF FIELD PREEMPTION AS A DEFENSE TO COMMON LAW TORT CLAIMS

On February 29, 2012, the United States Supreme Court refused to narrow field preemption jurisprudence, which provides a defense to common law tort claims. In *Kurns v. Railroad Friction Products, Inc.*, ____ U.S. ____, No. 10-879, slip op. (U.S. Feb. 29, 2012), a railroad employee sought to recover damages for alleged exposure to asbestos in locomotives and locomotive parts. The district granted summary judgment for the defendants on the ground that the employee's state-law claims were preempted by the federal Locomotive Inspection Act (LIA), 49 U.S.C. §20701, *et seq.* The Third Circuit Court of Appeals affirmed summary judgment.

The United States Supreme Court affirmed the lower courts, holding that Plaintiff's state-law design-defect and failure-to-warn claims fell within the field of locomotive equipment regulation pre-empted by the LIA as that field was defined in its prior decision, *Napier v. Atlantic Coast Line R. Co.*, 272 U. S. 605, 2-11 (1926). In *Napier*, the Supreme Court held two state laws prescribing the use of locomotive equipment pre-empted by the LIA, concluding that the broad power conferred by the LIA on the Interstate Commerce Commission (the agency then vested with authority to carry out the LIA's requirements) was a "general one" that "extends to the design, the construction and the material of every part of the locomotive and tender and of all appurtenances." 272 U. S., at 611.

At the Supreme Court, the petitioners did not argue that *Napier* should be overruled. Instead, the petitioners argued that their claims fall outside the LIA's pre-empted field. The Court rejected the petitioners' various arguments, stating that Congress, in enacting the LIA, "manifest[ed] the intention to occupy the entire field of regulating locomotive equipment." *Id.* Second, the Court held that the petitioners' petitioners' failure-to-warn claims were not directed at the equipment of locomotives, so they fell within the pre-empted field defined by *Napier*. Third, the Court found that *Napier* defined the pre-empted field on the basis of the physical elements regulated, not on the basis of the entity directly subject to regulation. Therefore, the Court rejected petitioners' argument that the employee's claims were not pre-empted because manufacturers were not regulated under the LIA when the employee was exposed to asbestos. Finally, contrary to petitioners' argument, the Court held that the LIA's pre-emptive scope is not limited to state legislation or regulation but extends to state common-law duties and standards of care directed to the subject of locomotive equipment.

Justice Thomas delivered the opinion of the Court in which Chief Justice Roberts and Justices Scalia, Kennedy, Alito, and Kagan joined. Justice Kagan filed a concurring opinion. Justice Sotomayor filed an opinion concurring in part and dissenting in part, in which Justices Ginsburg and Breyer joined.

FIFTH CIRCUIT FINDS NO ABUSE OF DISCRETION BY ERISA PLAN ADMINISTRATOR'S DECISION TO DENY DISABILITY BENEFITS

Last week, the Fifth Circuit Court of Appeals held that the administrator of an occupational injury benefit plan subject to ERISA did not abuse its discretion in denying disability coverage to a worker where the evidence supported the basis for its denial. In *Jurasin v. GHS Property & Casualty Insurance Co.*, 2012 WL 612559 (5th. Cir. Feb. 27, 2012), an injured worker sought long-term disability benefits under his employer's occupational injury benefit plan for injuries to his neck allegedly sustained during work. After a medical review officer determined, and the appeals board confirmed, that the employee's work-related injuries were limited to his thoracic and lumbar spine and did not include a pre-existing neck condition, the employee filed suit under ERISA's civil enforcement provision challenging the denial of benefits for his neck condition. The district court granted summary judgment in favor of defendants, Caprock Claims Management (plan administrator) and GHS Property & Casualty Insurance Co. (insurer), which the employee appealed.

Reviewing the district Court's decision to grant summary judgment *de novo*, the Fifth Circuit appeals panel looked to whether there was *some* evidence to support the administrator's decision to deny benefits, even if that evidence was disputable. The Court found evidence to support the administrator's decision to deny benefits related to the worker's neck and found no evidence that the plan administrator acted arbitrarily or capriciously. The Court further acknowledged there was some evidence that the employee's work accident worsened his neck condition but that such evidence was not enough for reversal.

The Court also determined that there was no evidence of a conflict of interest, as claimed by the employee. Although Caprock Claims Manager served as both the evaluator and payor, there was no evidence that Caprock's dual role affected the benefits decision.

HURRICANE IKE UPDATE: TWO MANDAMUS PROCEEDINGS FILED FOR REVIEW OF ORDER COMPELLING PRODUCTION OF ALL CORPORATE EMAILS

On February 15th, Cypress Texas Lloyds filed two petitions for writ of mandamus requesting the Fourteenth Court of Appeals to determine whether the 268th District Court in Fort Bend County abused its discretion by compelling Cypress Texas Lloyds to produce all its non-privileged corporate e-mails, regardless of their subject matter, for more than a three-year period. In *Joffrion v. Cypress Texas Lloyds*, No. 09-DCV-176764, and *Hamilton v. Cypress Texas Lloyds*, No. 10-DCV-177586, Judge Brady Elliott granted Plaintiffs' motions to compel production of every non-privileged corporate e-mail to and from every one of its employees during a three-year, four-month timeframe, without regard to the subject matter of those e-mails and without tailoring the discovery to matters involved in the hurricane cases at issue.

In its petitions for writ of mandamus, Cypress Texas Lloyds highlighted the impermissibly overly broad nature of the Court's order, stating that the discovery order requires Cypress Texas Lloyds to produce vast numbers of e-mails that have no conceivable bearing on the issues in either case. Cypress Texas Lloyds also points out that the trial court lacked authority to compel the global production of e-mails because neither Plaintiff propounded a discovery request for all e-mails of all Cypress Texas employees, yet the trial court compelled their production anyway. Cypress Texas argues it has no adequate remedy by appeal to remedy the extreme burden and expense associated with compiling, reviewing, and producing the enormous volume of e-mails generated by its employees during the period encompassed by the trial

court's order. Therefore, Cypress Texas requests that the Fourteenth Court of Appeals grant its petition for writ of mandamus and vacate the trial court's discovery orders.

Cypress Texas is represented by Warren W. Harris of Bracewell & Giuliani and by Thomas Fountain of Fountain & Associates. The Mostyn Law Firm represents Plaintiffs in both underlying state court actions.

HURRICANE IKE UPDATE: MDL PANEL ORDERS STAY OF STATE FARM IKE CASES

On February 28th, the Multidistrict Litigation Panel granted State Farm Lloyds' motion to stay and ordered that all Hurricane Ike trial court proceedings pending against State Farm to be stayed until further order of the MDL Panel.

"FIRST FRIDAY'S" WEB-SEMINAR TO BEGIN THIS FRIDAY, MARCH 9TH: "THE FUTURE OF BAD FAITH LITIGATION IN TEXAS"

This Friday, the Insurance Practice Group at MDJW will begin a new monthly continuing education program for those in the insurance industry to provide a one hour web-based program of interest to those who handle property or liability claims or manage insurance litigation in Texas. Lawyers from MDJW will host each month's one hour program on the first Friday of each month and each program will provide one hour of CE credit from the Texas Department of Insurance. (Most programs will qualify for consumer protection credit.) Each presentation will be limited to one hour and can be viewed and listened to from any desktop or laptop with audio-video capabilities. The program will be from noon to 1 p.m. Central each "First Friday" of the month.

The March 9th program will feature one of our firm's founding partners, Chris Martin, who will be discussing "The Future of Bad Faith Litigation in Texas." The program will look at the recent changes to the bad faith standard in Texas by our state's courts, litigation trends in such cases, claims handling implications, and practical considerations for those in the industry. The program will be free each month. Friday's program can be listened to on any computer and log-in information will be sent upon completing a very short registration process.

To register for this free CE program, send an email to: ce@mdjwlaw.com. If the email contains the words "register" or "First Fridays" (or anything else close), we will reply with the necessary log-in information for Friday's program.