The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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## EEOC CHARGE & SUBSEQUENT LAWSUIT ARE "RELATED CLAIMS" LATE NOTICE PRECLUDES COVERAGE UNDER CLAIMS MADE POLICY

The U.S. District Court in Dallas recently examined the notice requirements in an Employment Practices Liability Insurance policy and determined that the EEOC complaint and a subsequent lawsuit were "related claims" for the purpose of triggering the insured's sixty day notice requirement. In *Munsch Hardt Kopf & Harr P.C. v. Executive Risk Specialty Ins. Co.*, 2007 WL 708851 (N.D. Tex. March 8, 2007), the insured was notified of an EEOC discrimination complaint in July of 2001. After receiving notice from the EEOC of her right to sue, the former employee filed suit in July 2002 based on the same facts as alleged in her EEOC complaint. The insured then requested coverage but Executive Risk denied the claim based on the insured's failure to comply with the policy's sixty day notice of claim requirement.

The court determined that the notice requirement in the claims-made policy was a condition precedent to coverage and no prejudice was required. After reviewing the policy definitions of "claim" and "related claims" and other policy provisions, the court determined that the 2001 EEOC complaint and the 2002 lawsuit were "related claims" and the 2001 EEOC complaint triggered the insured's duty to provide notice of the claim within 60 days. Because the insured failed to provide notice until after the 2002 lawsuit was filed, summary judgment was granted in favor of Executive Risk, supporting their denial of coverage.

## INSURED WAIVED RIGHT TO ARBITRATE BY FILING SUIT

Last Friday, the Dallas Court of Appeals affirmed the trial court's judgment finding that the insureds waived their right to arbitrate claims by agreement, after filing suit when a dispute arose as to the claims to be included in the arbitration agreement. In *Prater v. State Farm Lloyds,* 2007 WL 778940 (Tex.App.-Dallas March 16, 2007), the insurer had agreed to arbitrate a claim for damage caused by a plumbing leak. On the date of the scheduled arbitration, the insureds sought to include an earlier claim and refused to proceed with arbitration unless the claim was included. State Farm refused, suit was filed and State Farm incurred over $40,000 in legal fees and expenses in defending the lawsuit. The insureds then filed a motion to compel arbitration under the earlier agreement. State Farm disputed which claims were included in the arbitration agreement and also argued that the insureds waived the agreement when they chose to file suit against State Farm. The trial court denied the motion to compel and the insureds appealed.

On appeal, the insureds challenged the trial court's denial of their motion to compel under the agreement to arbitrate all disputes between the parties, but failed to challenge the waiver argument asserted by State Farm. In doing so, the court found that the insureds waived the right to appeal the waiver issue and summary judgment denying the motion to compel arbitration was upheld.

# LEGISLATIVE UPDATE

In the past few weeks, additional legislation has been introduced which could have a significant impact on Texas insurers. Among the bills introduced in the House and Senate:

- H.B. 2665 – Relates to mediation of disputed third-party claims under personal automobile insurance policies. Under this legislation, a claimant could request, and an insured could require the insurer to mediate third-party liability disputes and pay related costs. The legislation would toll the limitations period for any right to pursue related litigation while the mediation process takes place. The prevailing party in any subsequent litigation would be entitled to recover court costs and attorney fees. The proposed legislation also stipulates that if an insurer fails to participate or does not negotiate in good faith, they commit an unfair or deceptive act or practice under Texas' Unfair Claims Practices Act.
- S.J.R. No. 26 – Proposes a constitutional amendment to permit the attorney general to prosecute cases involving ethics offenses and offenses involving insurance fraud.
- S.B. 1543 / H.B. 2569 – Seek to abolish certain motor vehicle insurance fraud reporting requirements.
- H.B. 3312 – Would require the Department of Insurance in conjunction with the Office of Public Insurance Counsel to gather and post information on the internet for consumers to use in comparing and obtain policy and rate information. See also H.B. 2065.
- S.B. 1263 / H.B. 2771 – Relates to agent licensing requirements, binding authority, fees and several other issues involving agents, managing agents, etc. and their related duties.

For more information on any of these bills or other pending legislation, please contact any of our attorneys.