



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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TEXAS MEDICAL LIABILITY ACT REPORT REQUIREMENTS DO NOT APPLY TO INSURER'S FRAUD CLAIMS AGAINST MEDICAL PROVIDERS

Last Wednesday, the Houston Court of Appeals affirmed a trial court's order denying a group of medical providers' motion to dismiss a lawsuit against them filed by Allstate entities alleging fraud and other causes of action. In *Shanti v. Allstate Insurance Company*, 2011 WL 5244360 (Tex.App. – Houston [14th Dist.] November 3, 2011), Allstate filed suit against Ishan Shanti, M.D., Larry Likover, M.D. and other entities providing medical services, alleging causes of action for fraud, conspiracy, unjust enrichment, and claiming damages resulting from settlements paid in reliance on false billing and other records prepared by the medical providers and relied upon by the insurers. The medical providers sought dismissal of the lawsuit under the Texas Medical Liability Act (TLMA) because the insurers did not timely file an expert report under the TMLA in support of their claims. The trial court denied the motion and this appeal followed.

On appeal, the court observed that the TMLA only requires an expert report from plaintiffs seeking recovery against a medical provider in a "health care liability claim." The court examined Texas case law rejecting application of the TMLA report requirements in similar circumstances, and closely examined the underlying facts and allegations asserted by Allstate against the providers including false billing, kickback schemes, and personal injury attorneys directing treatment. The court rejected the medical providers' arguments that these are health care liability claims recast as fraud, conspiracy and unjust enrichment and held that Allstate was not a claimant under the TMLA subject to its report requirements. The trial court's ruling denying the motion to dismiss the insurers' claims was affirmed.

COURT REJECTS "PARTICIPATORY LIABILITY" CLAIMS AGAINST EXPERT CONSULTANT IN IKE CLAIMS

Recently, a federal District Court judge in the Southern District of Texas granted summary judgment to an expert retained to provide an insurer with an opinion on the cost of repairing or replacing roofs damaged by Hurricane Ike, and rejected "participatory liability" claims alleging that the expert encouraged the insurer to deny the claims. In *839 East 19th Street, LP v. Lexington Insurance Company*, No. CA H-10-1181 (S.D. Tex. October 12, 2011), the court found that the expert "merely provided an opinion on the cost of repairing or replacing the Mesa Ridge roofs. UBS was a consultant, it did not work as an adjuster on the claim. Lexington was not obligated to accept UBS's opinion." Finding no evidence that the expert, UBS, encouraged Lexington to deny the claim, summary judgment was granted in the expert's favor.

IKE TRIAL IN HARRIS COUNTY DELAYED TO DECEMBER

Monday afternoon, Harris County Judge Steven Kirkland granted the Plaintiffs' Motion to Continue the trial setting in what would have been the first residential Hurricane Ike case to be tried in Houston in the case of *Battle vs. Cypress Texas Lloyds*. This afternoon the case was continued until December 5, 2011 and Plaintiffs were permitted to take 4 more depositions of the insurers' representatives, but the last minute depositions were limited to 8 hours total for all four depositions. Randy Cashiola and Amber Mostyn of The Mostyn Law Firm represent the homeowners and Tom Fountain of Fountain & Associates represents Cypress Texas Lloyds at trial. MDJW is not involved in this case but will be monitoring the trial if it goes in December.

MDJW UNIVERSITY: TEXAS INSURANCE SEMINAR
(NOVEMBER 15, 2011)

The lawyers of MDJW will host a free continuing education seminar in Dallas on November 15, 2011 covering the latest developments in Texas insurance law, litigation management, and trial strategy. Lawyers from the firm's tort trial group and its insurance trial team will provide updates on a host of cutting edge topics for those in the insurance industry who handle claims or manage litigation. This free one-day program will cover the latest claims handling issues, coverage issues, and litigation strategies arising out of auto and HO claims, construction defect claims, responsible third party claims, and primary/excess issues. We will also be examining the implication of the 2011 Texas "Tort Reform" Legislation, the future of Texas bad faith litigation, continuing *Stowers* exposures, and much more. A special lunch presentation from one of the nation's best jury science researchers will examine recent discoveries from Texas jury research projects.

David Disiere, Mark Dyer, Barrie Beer, Andrew Schulz and many of the other lawyers of MDJW will be speaking at this program. CE credit from the Texas Department of Insurance (including consumer protection hours) and CLE credit from the State Bar of Texas will be available for each attendee. The program will be held from 9:00 a.m. to 3:30 p.m. on November 15, 2011 in the large auditorium at the **Studio Movie Grill, 4721 W. Park Boulevard Plano, TX 75093**. The venue is located in north Dallas just off the Dallas North Tollroad, one mile north of the George Bush Turnpike. The venue is easy to reach from Love Field and any location in the DFW metroplex. Although attendance is free, we do need each attendee to register in advance so we can get an accurate count for lunch. Registration can be completed by emailing teresai@mdjwlaw.com or calling Teresa Ivory-Jones at **214-420-5534**. Space is limited and the attendance is filling up rapidly, so please RSVP at your earliest opportunity.

We hope to see many of our friends and clients in the insurance industry on November 15th in Dallas for the **2011 MDJW Texas Insurance Seminar**.

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom, L.L.P.
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