Martin, Disiere, Jefferson & Wisdom

The Weekly Update of Texas Insurance News

# TEXAS INSURANCE LAW NEWSBRIEF

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## U.S. SUPREME COURT CONSIDERS LIFE INSURANCE BENEFITS, REMARRIAGE AND FEDERAL PRE-EMPTION

In a case of federal pre-emption, the United States Supreme Court recently held a federal employee's life insurance policy was payable to the decedent's former wife and named beneficiary under federal law, not to the decedent's current wife under state law.

In *Hillman v. Maretta*, 133 S. Ct. 1943 (June 3, 2013), a federal employee had named his former wife as the beneficiary of his Federal Employees' Group Life Insurance policy. He had since divorced her and remarried, but never changed the beneficiary on the policy. The Federal Employees' Group Life Insurance Act gives precedence to the named beneficiary, while Virginia state law revokes all named beneficiaries in the event of a change in marital status. The Virginia statute also contains a pre-emption escape clause that creates a cause of action in favor of any person who would have been entitled to the proceeds but for pre-emption by federal law.

After Decedent's death, Former Wife claimed and collected the proceeds as the named beneficiary, in accordance with the federal law. Current Wife, who would have been entitled to the proceeds under Virginia state law, sued to recover them under the Virginia escape clause.

Examining federal interests, Justice Sotomayor observed that federal statutes governing group life insurance programs for federal employees and armed service members consistently give policyholders the freedom to designate beneficiaries, and establish a clear and predictable order of precedence for awarding the proceeds. And, Virginia's state law interfered with that predictability. Therefore, the U.S. Supreme Court affirmed the Virginia Supreme Court, holding that the federal law pre-empted not only the Virginia law revoking the beneficiary, but also the escape clause, and held that the proceeds belonged to the named beneficiary - the Former Wife.

Although this case involved Virginia law, similar federal pre-emption issues could potentially affect Texas community property law.

## WORKERS' COMPENSATION: TEXAS SUPREME COURT CONFIRMS EXCLUSIVE REMEDY BARS ALL EMPLOYEES

The Texas Supreme Court recently held that coverage disputes between the carrier and employer do not affect the workers' compensation exclusive remedy bar which prevents injured employees from suing their employers. In *City of Bellaire v. Johnson*, No. 11-0933, --- S.W.3d ---, 2013 WL 245051 (Tex. June 7, 2013), a city employee who was paid by a staffing service was injured on the job. He attempted to circumvent the exclusive remedy by arguing he was not actually covered by the policy because he was paid by the staffing service, not the city, and therefore he did not qualify as a "paid employee" for whom the workers' compensation policy provided coverage.

Relying on last year's decision, *Port Elevator-Brownsville, L.L.C. v. Casados*, 358 S.W.3d 328 (Tex. 2012), the Texas Supreme Court rebuffed the employee's hyper-technical attempt to escape the exclusive remedy bar. The court observed that the undisputed evidence showed he was legally the city's employee in that the city controlled the details of his work, and he was paid by the city via the staffing service, and he therefore fell into the category of employees "legally required to be covered."

# SOUTHERN DISTRICT OF TEXAS CONSTRUES CONTRACT UNDER ENGLISH LAW, CONSIDERS EXTRINSIC EVIDENCE

The federal district court for the Southern District of Texas recently had occasion to look to English law to construe a contract and a duty-to-defend dispute arising under it. *Pride Internat'l, Inc. v. Tesco Corporatio*n, No. H-12-2889, --- F.Supp. ---, 2013 WL 2431980 (S.D. Tex. June 4, 2013), involved a coverage dispute arising from an injury on an oil platform, a vague purchase order, and two commercial general liability policies issued to Tesco.

The purchase order was printed on Pride's forms bearing Pride's name and logo, but did not explicitly name Pride as the "Buyer." Instead, it named Pride's individual purchasing agent. The purchase order's terms and conditions required "Seller" to obtain insurance and name "Buyer Group" as an additional insured (AI). It also provided it was governed by the law of England.

Tesco's CGL carriers moved for summary judgment, contending that because only the individual purchasing agent was listed as the Buyer, their policies did not provide AI coverage to Pride, and they had no duty to defend Pride. The court observed that under English law, contracts are construed from the perspective of a reasonable person having all the background knowledge which would have been available to the parties. In other words, unlike Texas law, English law allows free consideration of extrinsic evidence which was available to the parties at the time of contracting. There was ample evidence to show that the parties understood Tesco to be the seller and Pride to be the buyer, and therefore the court denied the carriers' motion for summary judgment.

Lesson Learned: Always examine the choice-of-law issues carefully; including reviewing all policies and contracts for express choice-of-law clauses, before assuming the law of the forum state governs your dispute.