

# TEXAS INSURANCE LAW NEWSBRIEF

JULY 29, 2013

## SOUTHERN DISTRICT OF TEXAS REFUSES TO REMAND CASE REGARDING A RULE 11 AGREEMENT ENTERED INTO BETWEEN THE MOSTYN LAW FIRM AND STATE FARM

This past Tuesday, a Federal District Court Judge in the Southern District of Texas denied a plaintiffs' Motion to Remand because diversity allegedly existed in a putative class action suit. The legal issues involved a Rule 11 agreement regarding State Farm's agreement from several years ago not remove some cases to federal court that were filed by the Mostyn Law Firm which State Farm argued did not apply to this class action law suit because the plaintiff's claims did not involve exclusively Hurricane Ike claims.

In *Boles v. State Farm Lloyds*, CIV.A. H-13-286, 2013 WL 3820978 (S.D. Tex. July 23, 2013), Plaintiff filed an original petition against State Farm in a Galveston state district court. Plaintiff alleged State Farm intentionally underpaid his insurance claim relating to the damage to his home by Hurricane Ike. Based on the nature of his claim, plaintiff's action was transferred by State Farm to the multi-district litigation panel created to handle the pretrial management of Hurricane Ike-related claims.

Following the transfer, the plaintiff significantly amended his petition to include additional individual claims and claims allegedly on behalf of other similarly situated class members specifically described as "Texas policyholders who were State Farm's policyholders prior to January 2009 and: (1) suffered a covered loss which included roof damage; and (2) were improperly paid a "bundled" or "turnkey" price as settlement for their roof claims."

State Farm removed the case to federal court and Plaintiff's counsel attempted to uphold a Rule 11 agreement from several years earlier between State Farm and the Mostyn Law Firm wherein State Farm agreed not to remove certain Hurricane Ike cases filed by the Mostyn Law Firm. The Court carefully analyzed the agreement and concluded State Farm was not prohibited from removing cases that do not stem exclusively from Hurricane Ike claims, and the Court's review of Plaintiff's Amended Petition revealed that the basis of his lawsuit was not exclusively tied to Hurricane Ike claims practices and damages. Instead, the putative class included *all* Texas policyholders who were allegedly improperly paid for *any* covered roof damages for *any* type of loss prior to January 2009.

The Court therefore concluded that the case involved many potential plaintiffs whose homes were not touched by Hurricane Ike and State Farm was not precluded from removing the case to federal court under the terms of the Rule 11 agreement. Further, because State Farm and Boles were diverse parties, the Court concluded diversity jurisdiction was present and denied Plaintiff's Motion to Remand.

## FOURTEENTH COURT OF APPEALS HOLDS THAT A THIRD-PARTY CLAIMANT DOES NOT HAVE STANDING TO BRING CLAIMS BASED ON SECTIONS 541 AND 542 OF THE TEXAS INSURANCE CODE

Recently, the Houston Fourteenth Court of Appeals affirmed a district court's granting of an insurer's summary judgment in *Reule v. Colony Insurance Co*, 14-11-00602-CV, (Tex. App—Houston [14th Dist.] 2013). According to the plaintiff's pleadings, the homeowner's association Sherwood Valley I ("SVI") acted against her for years in an effort to cause her to move. The plaintiff maintained that SVI failed to address rodent problems, allegedly harassed her because she is female, disabled, and a single parent, allegedly denied her voting rights and access to HOA services, and allegedly defamed her. Plaintiff ultimately resolved her claims against SVI, but maintained a lawsuit against SVI's property and liability insurer for multiple claims she had asserted directly against Colony Insurance Company for her personal claims based on alleged violations of the Texas Insurance Code, breach of the duty of good faith and fair dealing, breach of fiduciary duty, DTPA violations, fraud, Federal and Texas Fair Housing Act violations, Federal and Texas Fair Debt Collection Act violations, Federal Civil Rights Act claims, RICO allegations, negligence and negligent misrepresentation claims, breach of contract, slander and libel, and civil conspiracy claims. Colony Insurance provided the master policy for all of the condominium units in SVI community. The homeowner's association, SVI, was the sole named insured on the policy. Colony asserted none of her claims were viable because she wasn't an insured.

The Court noted that the plaintiff failed to preserve, much less adequately brief, the majority of her claims; however, the Court carefully and thoroughly addressed her claims based on the Texas Insurance Code and the duty of good faith and fair dealing. Colony challenged Plaintiff's standing to bring direct claims under the insurance code because she was a claimant suing Colony's insured under its liability policy. Plaintiff argued that because she owned a condominium and paid association dues that she was also automatically a part of SVI and, therefore, an insured under the insurance policy. The Court determined that even if the plaintiff was an insured, the policy provided commercial general liability coverage that covered an insured when the insured injured another person or property, and the insurer did not provide coverage to the insured for the insured's *own* personal injuries or property damage.

The Court adopted the rationale set forth in *Rumley v. Allstate Indemnity Co.*, 924 S.W.2d 448 (Tex. App.—Beaumont 1996, no writ) wherein the Court considered whether a party who was a premium-paying insured under an insurance policy was in a different posture when she sued another insured and sought to trigger coverage under the liability provision of the policy. In *Rumley*, the Court refused to permit a named insured wife to maintain a cause of action under the Texas Insurance Code against her and her husband's insurance company for injuries she sustained while her husband was driving. Drawing parallels with the facts in *Rumley*, the Houston Court of Appeals concluded that even if the plaintiff paid a portion of the premiums and was theoretically entitled to receive liability coverage benefits under the policy, she was a third-party claimant suing the insured and, as a result, the insurer did not owe her duties under sections 541 and 542 of the Texas Insurance Code or any duty of good faith and fair dealing. To hold otherwise would mean the insurer would owe conflicting and inconsistent duties to both the tortfeasor insured *and* to the person suing their insured. Texas law has never allowed for a carrier to face such inconsistent duties. As such, the trial court's summary judgment was affirmed.

## Premises Liability – MDJW First Friday – August 2, 2013

Our next First Friday will be held on August 2, 2013 at noon Central Time. Jamie Cooper, a partner in the Houston office, will present "Premises Liability." Premises liability involves the legal responsibilities of property owners and occupiers to prevent injuries to persons on their property. Property owners are responsible for keeping their property safe and warning visitors of potential hazards. If they fail to do so, they can be held liable for any injuries that result. Premises liability claims depend on a number of different factors. For an adjuster, evaluating premises liability claims begins with understanding what duty the insured property owner owed the injured person, and whether the insured breached that duty.

Ms. Cooper's background is in general commercial litigation. Her insurance practice focuses on the evaluation and resolution of insurance matters involving coverage disputes, claims handling, and other legal issues of interest to insurers conducting business in Texas. Ms. Cooper provides continuing education courses to carriers on first party coverage as well as courses on compliance with Articles 541 and 542.051 of the Texas Insurance Code. Ms. Cooper is an Adjunct Professor of Property and Casualty Insurance Law at the University of Houston Law Center.

We have applied to the Texas Department of Insurance for one hour of Texas CE credit. Insurance professionals accredited by the Texas Department of Insurance should have their license number available during the training in order to request credit for the course.

Register for this webinar at: <https://student.gototraining.com/r/4951406876008335104>

After registering you will receive a confirmation email containing information about joining the training. We have a limit of 200 participants for the webinar.

Note: If you have never participated in one of the MDJW webinars, or, if you have had trouble in the past connecting to a webinar, please use the following link to check your computer's connectivity:

[http://support.citrixonline.com/en\\_US/gotomeeting/all\\_files/GTM140010](http://support.citrixonline.com/en_US/gotomeeting/all_files/GTM140010)