

TEXAS INSURANCE LAW NEWSBRIEF

DECEMBER 10, 2013

U.S. SUPREME COURT ENFORCES CONTRACTUAL FORUM-SELECTION CLAUSE, ALLOWS TRANSFER OF VENUE

Last Tuesday, the Supreme Court of the United States issued a decision that could have broad effects on policyholders, and by extension on liability insurers, by determining where litigation between parties to contracts takes place. *Atlantic Marine Const. Co. v. U.S. Dist. Court for the Western District of Texas*, No. 12-929, --- S. Ct.--- (Dec. 3, 2013) involved a dispute over a construction contract in Texas. The contract specified that all disputes would be litigated in the general contractor's home state, Virginia. The Texas subcontractor filed suit in the Western District of Texas, a venue that was proper except for the contractual agreement to litigate all disputes in Virginia. The general contractor moved to dismiss for improper venue, or in the alternative, to transfer venue to a Virginia federal court. District Judge Lee Yeakel denied the motion, and the Fifth Circuit denied mandamus.

However, the Supreme Court accepted a writ of certiorari and reversed in an opinion authored by Justice Alito. The court held the general contractor was entitled to enforcement of its contractual forum-selection clause, and the suit should be transferred to Virginia. Although a contractual forum-selection clause cannot force outright dismissal of a case filed in an otherwise proper venue, it can force transfer to the contractually agreed forum via a motion to transfer venue to another federal district under 28 U.S.C. § 1404. While the usual analysis of a motion to transfer venue weighs both private and public interests, the presence of a contractual forum-selection clause trumps all other private interests because it is the manifestation of the parties' agreement.

This holding is consistent with the long-cherished Texas principles of freedom to contract and enforcement of unambiguous contract terms. The Supreme Court made clear a clear statement that if a business contractually chooses to waive its right of access to courts in its home state, that decision will be enforced in federal courts. This outcome may lead to more certainty for policyholders involved in litigation about where that litigation will take place, because it allows for greater confidence that a contractual forum-selection clause can be meaningfully enforced in federal courts.

EASTLAND COURT OF APPEALS ENFORCES "CARE, CUSTODY OR CONTROL" EXCLUSION IN CGL POLICY

MDJ&W congratulates Kevin Cain, Todd Lonergan, Ruth Brenton, and the firm's appellate team for another great appellate win on behalf of our client, Unitrin Specialty Lines Insurance. In *Hallmark Specialty Ins. Co. and Unitrin County Mut. Ins. Co. v. Manriquez Trucking*, No. 11-12-00082-CV (Tex. App.—Eastland, Nov. 27, 2013) (slip op.), the Eastland Court of Appeals upheld the "care, custody and control" exclusions in two CGL policies, reversing the trial court and rendering judgment that the carriers had properly declined to defend their mutual insured in an underlying lawsuit against the insured.

The underlying suit involved a train/truck collision in which a train struck a tractor-trailer truck that was stopped on the railroad tracks. The truck was carrying a crane which the insured, Manriquez Trucking, had contracted to haul. The crane was seriously damaged in the collision and rendered a total loss. The owner of the crane sued Manriquez for the loss of the crane. Unitrin and Hallmark, the liability carriers for Manriquez, refused to defend Manriquez because the crane was alleged to be in the care, custody or control of Manriquez at the time of the accident and thus fell within the "care, custody or control" exclusions in the policies. In particular, the Unitrin policy contained the following exclusion:

This insurance does not apply to any of the following:

"Property damage to... property owned or transported by the insured or in the insured's care, custody or control."

Such exclusions are designed to prevent the insured from using a CGL policy as *de facto* property insurance and to require separate property insurance for the insured's own property or property of which it takes custody as part of its business. Manriquez sought a declaratory judgment requiring the carriers to defend it, alleging the crane was not in its care, custody or control at the time of the accident, but was instead in the care, custody or control of an independent contractor to whom it subcontracted the hauling of the crane.

After the trial court granted summary judgment in favor of Manriquez, holding the carriers owed a duty to defend it, the Court of Appeals reversed. The court observed that the underlying purpose of the “care, custody and control” exclusion was to exclude coverage for personal property held under a bailment, and noted the crane owner’s allegations specifically alleged the factual elements of a bailment relationship between itself and Manriquez. The court also observed that the owner’s allegations stated specifically that the crane was in the care, custody or control of Manriquez at the time of the accident. Applying the eight-corners rule, the court concluded the allegations clearly triggered the “care, custody or control” exclusions and there was no duty to defend. Although Manriquez argued certain ambiguous phrases about the relationship between Manriquez and the truck operator could lead to the inference that the truck operator was an independent contractor who had custody of the crane at the time of the accident, the court rejected that inference as unreasonable in light of the clear allegation that the crane was in the care, custody or control of Manriquez.

IN THE NEWS: GALVESTON'S JUDGE SUSAN CRISS RESIGNS TO RUN FOR STATE LEGISLATURE

State District Judge Susan Criss, presiding judge of the 212th District Court of Galveston County, announced last Friday she is resigning her bench to run for a state representative post being vacated by Craig Eiland (D-Galveston). Criss, a Democrat, said in an email that she had sent a letter to Governor Rick Perry making her resignation effective at 5 p.m. Friday, December 6th. Governor Perry will appoint a replacement within the next month or two. Judge Criss presided over all of the Hurricane Ike insurance cases in Galveston for the past 4 years.

[See the full story, courtesy of the Houston Chronicle.](#)