

# TEXAS INSURANCE LAW NEWSBRIEF

FEBRUARY 17, 2014

## SOUTHERN DISTRICT JUDGE SANCTIONS INSURED FOR "CONCEALING MATERIAL FACTS DURING THE CLAIM PROCESS" AND THEN FILING SUIT

A Federal District Judge in the Southern District of Texas, Houston Division, granted a motion for sanctions against a Plaintiff that concealed material facts during the claim process when he subsequently sued his insurer for "insurance coverage which he had clearly and inarguably forfeited through his own disingenuous actions." In *Alexander v. State Farm Lloyds*, 4:12-CV-490, 2014 WL 549389 (S.D. Tex. Feb. 11, 2014), a homeowner sued State Farm for breach of contract; violations of the Texas Insurance Code; violations of the Texas Deceptive Trade Practices Act ("DTPA"); and breach of the duty of good faith and fair dealing for damages allegedly resulting from a fire at his residence. The Policyholder sought over \$1 million under the Policy's Dwelling coverage, and additional payments of approximately \$77,000 for Additional Living Expenses ("ALE"), personal property damage, and securing of the Residence. The case proceeded to trial and Mr. Alexander began presenting his case in-chief.

After three days of testimony, the Court excused the jury from the courtroom and inquired as to whether there existed any arguable grounds for Mr. Alexander's claims. The Court noted that Mr. Alexander's conduct during the claims adjustment process was clearly fraudulent and more commonly engaged in by criminal defendants than civil plaintiffs. After requesting a private conference with his attorneys, Mr. Alexander moved to dismiss his claims with prejudice. State Farm subsequently filed a cross-motion requesting attorney's fees as a condition of dismissal. The Court found that Rule 11 under the Federal Rules did not allow sanctions in this circumstance, but attorney's fees could be awarded as sanctions under Texas Rule 13 and Chapter 10 of the Civil Remedies and Practices Code. As such, the Court dismissed the case and awarded attorney's fees to State Farm incurred up to the date of removal.

## MDL PANEL REMANDS STATE FARM VALLEY HAIL CLAIMS TO ORIGINATING TRIAL COURTS

Last Thursday, the Multidistrict Litigation ("MDL") Panel considered State Farm Lloyds' motion to remand March and April 2012 Hidalgo County hailstorm related lawsuits to the original trial courts and granted its' request. In *In re Wellington Insurance Company Hailstorm Litigation*, MDL No. 13-0123 (Tex. M.D.L. Panel Feb. 13, 2014), the pretrial court denied the motion to remand and State Farm Lloyds asked the MDL Panel to set aside the denial. State Farm argued that the cases against it are not related to the cases against thirty-one other insurers in the existing MDL pretrial court set up for the storms.

The MDL Panel reviewed its prior decisions addressing the relatedness issues and noted that in addressing weather related events, "Cases are related where one or more significant weather events occurring in close proximity form the framework of the litigation, and the litigation involves allegations of similar standard business practices." The MDL Panel concluded:

Applying these principles, we conclude that the insurance cases against State Farm are not related to the cases already in the MDL pretrial court. They arise from the same weather events, but the business-practices allegations against State Farm are not related to those against the other thirty-one insurers because whether State Farm engages in unlawful business practices is not related factually to whether other insurers do so. Because the State Farm cases are not related to those already before the pretrial court, they are not tag-along cases and the motion to remand them is therefore granted.

The court went on to observe, however, that "nothing in this opinion prevents any litigant from filing a motion for transfer and arguing that the cases against State Farm are related *to each other*, and that it would serve the interests of convenience, efficiency, and just handling to place them into a new pretrial court or into the existing one." Accordingly, the order denying State Farm's Motion to Remand was reversed, and the cases against State Farm were remanded to the originating trial courts.

*Editor's Note:* This case is significant in finding that one insurer cannot be "tagged" into another insurer's MDL because the allegations are particular as to each insurer and therefore, not related. And, the MDL Panel rejected arguments that State Farm's position should be rejected because it stood alone amongst the insurers in resisting the tag-along process. In doing so, the Panel succinctly stated in footnote 3: "Rights, we said, are possessed and asserted by individual litigants, and courts do not resolve disputes by asking for 'a show of hands.'"

MDJW partners, Christopher Martin, Levon Hovnatanian and Kevin Cain had the privilege of representing State Farm Lloyds on this matter and congratulates them on this significant result.