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TEXAS INSURANCE LAW NEWSBRIEF

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MAN DRIVES $1 MILLION CAR INTO SHALLOW GALVESTON LAGOON—LANDS IN DEEP TROUBLE WITH FEDS

A man from Lufkin pled guilty last week to federal fraud charges for driving his exotic sports car into La Marque lagoon near Galveston for the primary purpose of collecting on his auto insurance policy. Federal authorities say that Andy Lee House paid for a 2006 Bugatti Veyron with a $1 million loan and insured the vehicle for $2.2 million. His intentional damage to his exotic sports car was, unknown to him, captured on a cell phone camera of a passing motorist who was enamoured by his unique car. That video subsequently went viral on YouTube and other social media sites. To date, over 7 million people have seen the cell phone footage of the crash, including federal law enforcement authorities. The YouTube video can been see here: https://www.youtube.com/watch?v=4NJmB1F2mdE

The video was apparently taken because only 200 such vehicles were ever built. Although the Bugatti Veyron can reach speeds of over 200 miles per hour, it wasn't the speed that caused him to swerve into the inter-coastal bay. The owner initially told investigators it was a pelican. House allegedly told authorities in November of 2009 that he was reaching for his phone in the floor board when he looked up and saw the allegedly responsible bird. That was his story until a fellow-driver's cell phone video went viral and showed otherwise. House's scheme not only cost him a world-renown vehicle, but could also result in his spending the next 20 years in prison for attempted insurance fraud. After last week's guilty plea, he is awaiting sentencing at this time.

LOUISIANA JURY FINDS IN FAVOR OF INSURER IN HURRICANE PROPERTY DAMAGE CASE—TAKE NOTHING VERDICT ENTERED IN FAVOR OF REPUBLIC FIRE AND CASUALTY INSURANCE COMPANY

After a one-week trial in the United States District Court for the Eastern District of Louisiana, a jury recently entered a unanimous verdict that the plaintiff take nothing in its case against Republic Fire and Casualty Insurance Company. In *Fred DeFrancesch v. Republic*,[1] the plaintiff sought to recover for property damage arising from Hurricane Isaac. The plaintiff demanded $323,656.97 based on an estimate by two engineers, $647,313 in penalties, and $517,851 in costs. Although Republic's own experts estimated damage of $18,998, Republic declined to pay the claim because this amount was below the deductible.

After Republic concluded its case, it moved for and was granted a judgment as a matter of law dismissing all of plaintiff's extra-contractual claims, leaving only the breach of contract claim. In less than three hours, the jury returned with a verdict that plaintiff had no damages exceeding the deductible amount. Because plaintiff failed to timely file a motion for new trial or notice of appeal, Judge Susie Morgan will likely enter final judgment in favor of Republic.

[**Editor's Note**: Even though this case was tried in Louisiana, it consists of another win for the insurance industry in a hurricane-related dispute and we felt it was worth worthy of reporting from our neighboring state. We congratulate our friends at Republic on this significant victory].

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[1] *Fred Defrancesch v. Republic Fire & Casualty Ins. Co.*, No. 13-5583 (E.D. La. Aug. 1, 2014).

COURTS RULE IN FAVOR OF INSURERS IN TWO VACANCY CLAUSE CASES

The Texas Supreme Court ruled in favor of Farmers Insurance in a case involving fire damage to a residence. In *Greene v. Farmers Insurance Exchange*,[1] the Court clarified the effect of vacancy provisions that exclude coverage for property damage if a dwelling is vacant for a specified period of time. In this case, LaWayne Greene, the policyholder, moved from her home in July of 2007 and notified Farmers that she intended to sell the property. In November of 2007, a fire from a neighboring house spread and damaged Greene's property. Farmers denied coverage based on the vacancy provision that excluded coverage if the dwelling was vacant for more than sixty days.

Both parties moved for summary judgment on the breach of contract claim. Greene based her argument on Texas Insurance Code Section 862.054 (the "anti-technicality statute"), which states that a policy will not be voided by the insured's breach or violation of a warranty, condition, or provision of a fire insurance policy. Greene reasoned that her triggering of the vacancy clause by moving was a "breach" within the meaning of the statute, which therefore left coverage intact.

The Court rejected this argument stating that the vacancy clause did not constitute a promise by Greene to occupy her house but was instead an agreement by Farmers to continue insuring the house for sixty days after it is no longer her residence. The Court also rejected Greene's argument that Farmers could not rely on the vacancy clause because the vacancy did not prejudice Farmers. The Court cited several examples of the prejudice doctrine, which prevents an insured from losing the benefits of a policy if it commits an immaterial breach that does not prejudice the insurance company. As with its rejection of Greene's first point, however, the Court held that because Greene did not breach her obligations under the policy by vacating the property, the question of prejudice was irrelevant.

In another case addressing a similar vacancy clause provision, Judge David Godbey of the Northern District of Texas granted summary judgment in favor of Travelers Insurance.[2] *Bedford v. Travelers* involved a claim for loss from theft on commercial property. The property owner and a new lessee contacted the police after they noticed that personal property had been stolen from the premises. The police investigation uncovered information that suggested that the property had been vacant for several months.

After Bedford sued Travelers for denying the claim based on the vacancy exclusion, both parties moved for summary judgment on breach of contract. The court first overruled Bedford's objection that the police reports were inadmissible hearsay. The court found these reports were admissible under the business records exception and were not based on inadmissible hearsay such as witness statements which could take them out of the exception. The court then rejected Bedford's argument that the vacancy provision did not apply because Travelers could not specify the exact date that the loss occurred. The court noted that even though Bedford may be correct that the exact date of loss was unknown, Travelers introduced sufficient evidence that the property was vacant during *any* relevant sixty-day period. Because the court found no breach of contract as a matter of law, it also granted summary judgment in favor of Travelers on all extra-contractual claims.

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[1] *Bob Greene v. Farmers Ins. Exchange*, --S.W.3d--, 2014 WL 4252271 (Tex. Aug. 29, 2014).

[2] *Bedford Internet Office Space, LLC v. Travelers Casualty Ins. Co.*, No. 3:12-cv-4322-N, 2014 WL 4230315 (N.D. Tex. Aug. 25, 2014).

HOUSTON COURT OF APPEALS FINDS COMPANY NOT AUTOMATICALLY ENTITLED TO COVERAGE FOR PUNITIVE DAMAGES

In *Tesco*,[1] the First Court of Appeals held that Tesco Corporation was not automatically entitled to coverage for punitive damages from its insurer, Steadfast Insurance Company. The dispute arose out of a personal injury lawsuit by an employee of Tesco who worked on its drilling rig. Although Steadfast provided Tesco with a defense in this underlying lawsuit, it declined to pay the $1,500,000 that the jury awarded as punitive damages.

After finding that the commercial general liability policy clearly covered punitive damages as those damages that Tesco "becomes legally obligated to pay," the court turned to whether Texas public policy prohibited the enforcement of an insurance contract that covered these damages. The court revisited a Texas Supreme Court case[2] that noted that punitive damages *may* violate public policy if the insured is a business that is required to pay these damages for the conduct of its employees. It found that Tesco's summary judgment evidence did not conclusively establish the extent to which Tesco employees or management contributed to the underlying injury. The court therefore affirmed the trial court's denial of Tesco's motion for summary judgment that coverage of punitive damages was enforceable under Texas public policy under the facts of this particular case.

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[1] *Tesco Corp. v. Steadfast Ins. Co.*, --S.W.3d--, 2014 WL 4257737 (Tex. App.—Houston[1st Dist.] Aug. 28, 2014).

[2] *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 655 (Tex. 2008).