

TEXAS INSURANCE LAW NEWSBRIEF

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TEXAS JUDICIAL ELECTION REPORT

The biggest legal news in Texas following Tuesday's election was the loss of every Republican judicial seat on the Harris County civil trial bench which was up for reelection in yesterday's contest. The Democratic sweep of Texas' largest county will result in the loss of several of the most highly rated judges in Houston. On the state court civil trial bench in Houston, all fifteen Republican candidates for a judicial seat lost their bids resulting in 5 Republican incumbents losing their benches, 9 Democratic incumbents retaining their benches and 1 Democratic candidate winning the only open seat on the Houston civil trial bench. In the races for the Harris County criminal trial bench, the race for District Attorney, and the race for County Attorney, the Democratic candidates also swept every legal post.

Although the four major metro areas in Texas all voted consistently Democratic across all contested races, the races for statewide office resulted in sizeable Republican wins including in the statewide judicial races. The Texas Supreme Court remains an all-Republican court with Justices Deborah Lehrman, Paul Green and Eva Guzman retaining their seats by beating Democratic challengers.

Because the intermediate courts of appeal include voters from outside the county where they sit, Republican justices were able to retain their seats on the Houston 1st, Houston 14th and Dallas Courts of Appeal. In Houston, Republican Justices Sherry Radack, Evelyn Keyes, Kevin Jewell and Tracey Christopher retained their seats despite losing in Harris County. Likewise, Republican Justice Lana Myers of the Dallas Court of Appeals beat her Democratic challenger despite losing in Dallas County. In the San Antonio Court of Appeals, Democratic challenger Irene Rios defeated Republican incumbent Jason Pulliam and in the 13th Court of Appeals (which serves deep south Texas south of Corpus Christi to the Rio Grande Valley), Democratic challenger Leticia Hinojosa defeated Republican incumbent Greg Perkes.

In Dallas County, Travis County (Austin) and Bexar County (San Antonio), the Democratic candidates won every judicial civil trial court race. All three metro counties swung predominantly Democratic in 2008 so there were no Republican incumbents who lost seats in these counties. The Democratic incumbents won every trial court bench in all three counties and the Democratic challengers also won every open judicial seat on the state civil trial bench in these counties.

[Editor's note: Texas' system of partisan judicial elections is argued by some as being repugnant and nonsensical. At a minimum, state judges should run without partisan labels. Ideally, they wouldn't have to run for office in a way that requires extensive financial contributions from those who practice before them. Over of the past three decades, both parties have experienced judicial sweeps of the state's largest courthouses resulting in the ouster of a number of very experienced, fair and talented judges. Despite valiant attempts in every recent session of the Texas Legislature to change Texas' outdated system of partisan judicial elections, reform efforts have been blocked each time resulting in the perpetuation of a system which makes the loss of some of the state's most experienced judges inevitable due to partisan sweeps during different election cycles.]

BEAUMONT COURT OF APPEALS CONDITIONALLY GRANTS MANDAMUS TO PROTECT INSURER FROM INSTITUTIONAL DISCOVERY OF "OTHER CLAIMS"

Last Thursday, the Beaumont Court of Appeals granted mandamus relief to protect an insurer from irrelevant and overbroad discovery requests in a bad faith suit arising out of wind damage allegedly caused by Hurricane Rita. *In re Texas Windstorm Insurance Association*, 2016 WL 6518614 (Tex. App.—Beaumont 2016), insureds David James and Sue James sued their wind storm insurer alleging that it had used unfair settlement practices when evaluating the damage to their home after Hurricane Rita. In an effort to gain data to support their experts' opinions, the insureds requested all photographs and damage estimates on every other Hurricane Rita claim which their insurer adjusted within a one mile radius of their home. After the insurer refused to comply with the overbroad discovery request, the trial court eventually granted the insured's motion to compel and ordered the insurer to produce the claim files as requested. The insurer sought mandamus relief from the intermediate appellate court arguing the trial court abused its discretion by compelling production of claim files related to different homes not in dispute in the litigation at hand.

When evaluating the request for mandamus relief, the Court of Appeals noted that “overbroad requests for irrelevant information are improper” and relied on the very recent *In re National Lloyds Ins. Co.* decision by the Texas Supreme Court, which also dealt with “institutional bad faith” discovery which transcended the insurance claim in question. In that case, the Texas Supreme Court held a trial court had abused its discretion by ordering an insurer to produce claim files on all homes in the same area as the insured plaintiff’s home. In an effort to avoid the precedent set by *National Lloyds*, the insureds’ counsel in *Texas Windstorm* submitted affidavits from their claims handling expert stating the requested photographs and estimates would be beneficial to his opinions and conclusions. The Beaumont Court of Appeals, however, noted that a previous report filed by the same expert for the insured demonstrated the irrelevance of the requested information because it said excessive wind damage is highly sporadic due to the unpredictable pattern of high winds during a storm. The appellate court thus rebuffed the insured’s request to “scour claim files in hopes of finding similarly situated claimants” and ordered the trial court to vacate its order compelling production of the requested photographs and damage estimates from other claims involving other insureds.

[Editor’s Note: The insureds in this case were represented by Steve Mostyn and Randy Cashola of the Mostyn Law Firm. TWIA was represented by Jay Old of Old & Associates in Beaumont and Austin as well as David Salyer of the Mcleod Alexander firm in Galveston.]