



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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COVERAGE DISPUTE RESULTS IN DETERMINATION THAT POLICY'S ANTI-ASSIGNMENT PROVISION DOES NOT REACH *STOWERS'* RIGHTS, WHICH ARE ASSIGNABLE, AND CHAPTER 542 CLAIMS ARE NOT ASSIGNABLE AS A MATTER OF LAW

On Wednesday, a federal court in the Western District of Texas ruled on competing motions for judgment among several carriers in coverage litigation following the conclusion of the underlying liability suit. The underlying suit involved an unsafe condition of property, which resulted in injury to the plaintiff of more than \$1.6 million. The underlying defendant had a \$1 million primary policy issued by Nautilus and a \$20 million excess policy issued by Philadelphia Indemnity Company. A third insurer became involved when it issued bonds to prevent enforcement of the underlying judgment. Through a series of transactions, Nautilus eventually paid all of the judgment against the insured in exchange for assignments of any *Stowers'* rights, Texas Insurance Code claims, and contractual rights against Philadelphia. Nautilus then sought reimbursement from Philadelphia for its refusal to fund any portion of the judgment because Philadelphia claimed it was not timely notified of the loss.

In reviewing the competing motions for judgment, the court first determined that Philadelphia's policy's anti-assignment provision prevented assignment of any contractual rights against Philadelphia. But, the court determined that the provision did not reach the *Stowers'* claim, which it correctly reasoned was an independent cause of action outside the reach of the provision. The court then turned to whether the Texas Insurance Code claims were assignable. It found that the Chapter 541 claims were not assignable because they were personal to the policyholder.

The court then determined that Philadelphia's late-notice defense was without merit. The court properly determined that Philadelphia had to show that it was prejudiced as a result of the late notice. It went on to determine that it did not do so, rejecting Philadelphia's defense. Lastly, the court determined that the Philadelphia policy provided coverage for the underlying claim. It then entered summary judgment for Nautilus.

U.S. DEPARTMENT OF LABOR AND TEXAS DEPARTMENT OF INSURANCE OFFER *FREE* HEALTH CARE LAW COMPLIANCE SEMINAR MAY 17 AND 18, 2011 IN AUSTIN

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) and the Texas Department of Insurance will host a free health law compliance assistance seminar on May 17 and 18 at the University of Texas at Austin, Thompson Conference Center, located at 2405 Robert Dedman Road, Austin, Texas 78712. The seminar is part of the Labor Department's Health Benefits Education Campaign

to assist small to mid-size employers, third party administrators, and insurers in complying with the Affordable Care Act, the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Health Insurance Portability and Accountability Act (HIPAA), the fiduciary responsibility provisions in the Employee Retirement Income Security Act, the Family and Medical Leave Act, and other recent health benefits laws.

Seminar attendees will receive a copy of the booklet, "**Health Benefits Coverage Under Federal Law**," and other material. The booklet also is available at <http://www.dol.gov/ebsa/pdf/CAGTableOfContents.pdf>, or by calling the EBSA toll-free at 866-444-3272. Panelists will include representatives from EBSA, the Texas Department of Insurance, the Labor Department's Office of Wage and Hour Division, and the Internal Revenue Service. Registration is on a first-come, first-served basis, with only limited spaces available, and interest parties should register early. Visit <http://www.dol.gov/ebsa/HBEC.html> or call Sandra Lynch at 202-693-8671 for a registration form. Then, email the form to educationcampaignseminars@dol.gov or fax it to 202-219-8141.

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