



The Weekly Update of Texas Insurance News

## TEXAS INSURANCE LAW NEWSBRIEF



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### **ILLEGAL ALIEN'S MATERIAL MISREPRESENTATIONS IN POLICY APPLICATION SUPPORTS DENIAL OF DEATH BENEFITS**

Last Wednesday, the Fifth Circuit analyzed a denial of life insurance benefits to an employee who died in a car accident. In *Garcia v. American United Life Insurance Company*, 2011 WL 1409222 (5<sup>th</sup> Cir. (Tex.), April 13, 2011), the insurer's investigation determined that the employee was an illegal alien and had provided a false social security number on his application for insurance. After the employee died in the accident, the insurer rescinded the policy based on the "material misrepresentation" and denied the claim presented by the employee's spouse. The trial court granted summary judgment in favor of the insurer and this appeal followed.

The Fifth Circuit considered whether ERISA preempts Texas common law governing the rescission and concluded that federal law applies, and that the lower court applied the correct, abuse of discretion standard of review. Turning to the merits of the case, the court then analyzed whether the insurer abused its discretion in rescinding the policy and denying the claim. The court observed that the insurer had regularly denied benefits based on a determination that an insured was not legally living or working in the United States. And, the court noted that an "insured's misrepresentation is "material" if the facts that were misrepresented or omitted would have affected the insurance company's decision to issue the policy." The court concluded that the insurer would not have issued the policy had it known the facts.

The court observed that a SSN is an integral part of the identification process. And, the Department of the Treasury maintains a list of designated individuals, (e.g. terrorist, drug dealers, etc.) with whom insurance companies are prohibited from engaging in transactions. Violations carry both substantial penalties and fines, and the insured's material misrepresentations, if allowed by the insurer, could subject them to substantial civil and criminal penalties. Accordingly, the court concluded that the submission of a false SSN on the application was a "material misrepresentation" that justified rescission of the policy and denial of benefits. The trial court's decision was affirmed.

### **COURT ABATES LAWSUIT PENDING INSURED'S COMPLIANCE WITH PRE-SUIT DOCUMENT REQUEST AND EUO**

Last Monday, a United States District Court judge in the Southern District of Texas, Houston Division, considered an insurer's motion for summary judgment alleging that the insured breached the contract before filing the lawsuit by failing to provide documents requested and failing to submit to an examination under oath (EUO). In *Rosasco Holdings, Inc. v. Lexington Insurance Company*, 2011 WL 1363799 (S.D.Tex., April 11, 2011), events following the effective date of the policy and involving cancellation and reinstatement were highly disputed. And during that time frame, the insured property sustained damage as a result of a wind and rain storm. The insurer requested documents from the insured

as part of its coverage investigation. And they also requested an examination under oath after the insured retained counsel. Without complying with the requests, the insured filed the lawsuit. And the insurer moved for summary judgment claiming breach of contract.

The court rejected the insured's argument that they "substantially complied" with the terms of the policy and also rejected the argument that the insurer waived its right to an EUO. But the court also denied the insurer's motion for summary judgment, without prejudice, concluding that the proper remedy is abatement until 30 days after the insured produces all documents reasonably required by the insurer and, submitting to the EUO.

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