Martin, Disiere, Jefferson & Wisdom

The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF

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FIFTH CIRCUIT AFFIRMS "NO NEGLIGENCE" FINDING ON INSURED DRIVER WHO CROSSED CENTER LINE AND STRUCK CLAIMANT'S VEHICLE

The Fifth Circuit recently affirmed a take-nothing judgment in favor of the insured driver in an auto accident case tried before a jury in federal court in the Southern District of Texas. In *Jordan v. Zavolas*, No. 19-20166 (5th Cir. Jan. 2020), the insured driver crossed the center line and collided with the claimant's vehicle. The jury answered "no" to the question, "Did the negligence, if any, of Noah Zavolas proximately cause the occurrence in question?" In affirming the take nothing judgment, the Fifth Circuit's unpublished opinion states:

The magistrate judge, who tried the case by consent, denied plaintiff's motion for new trial succinctly explaining that "under Texas law, being the 'cause' of an accident does not equate with being negligent." Thus, despite that the defendant admitted to being the cause for having crossed the center line on a curve on a slippery road, there was sufficient evidence for the jury to find no negligence.

Agreeing with the trial court's reasoning, the Fifth Circuit affirmed the take nothing judgment in favor of Mr. Zavolas.

Editor's Note: MDJW congratulates it law partner, Shane Osborn and his team in successfully defending Mr. Zavolas in this lawsuit, and MDJW appellate partner Levon Hovnatanian, for successfully defending this matter on appeal. We also thank State Farm Mutual Automobile Insurance Company for allowing us the privilege of defending its insureds.

FEDERAL COURT REMANDS UIM DISPUTE DESPITE PLEADING AMOUNT IN CONTROVERSY ABOVE FEDERAL THRESHOLD

Last week, a San Antonio federal judge granted a motion to remand in favor of an insured, holding the amount in controversy was less than $75,0000, despite the claim for damages on the face of the original pleadings. In *Boardman v. Allstate Fire and Casualty Insurance Company*, 5:19-CV-01399, 2020 WL 487225 (W.D. Tex. Jan. 29, 2020), Plaintiff Boardman filed a lawsuit in state court against Allstate. Pursuant to Texas Rule of Civil Procedure 47, Boardman sought monetary relief between $200,000 and $1,000,000 for "contractual damages, penalty interest under Chapter 542 of the Texas Insuranc**e** Code, and attorney's fees." Allstate removed the case. After removal, Boardman requested and was granted leave to file an amended complaint wherein she clarified her damages based on $30,000 in policy limits.

Boardman argued that remand was necessary because the value of her claim was less than $75,000. Allstate argued it was facially apparent in the operative pleading at the time of removal that the amount in controversy exceeded $75,000 because the petition sought monetary relief between $200,000 and $1,000,000.

The court began its analysis by noting that the removal statute must be strictly construed against the party seeking removal. The court then noted that ordinarily the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy. However, where a demand is "made in bad faith or when state practice does not permit demand for a specific sum of damages," the pleading does not control. In Texas, the court found it is not clear if Rule 47 permits a plaintiff to state a specific sum. The court then found that given the $30,000 policy limit, it did not appear that the claims will exceed $75,000 should Boardman receive an award of $30,000 and prevail on her Texas Insurance Code prompt payment claim and be awarded attorney fees and costs. Consequently, Allstate failed to meet its burden to show that the amount in controversy exceeds the threshold. The court granted the motion and remanded the case.