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The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF



A Service of Martin, Disiere, Jefferson & Wisdom L.L.P.

Principal Office 808 Travis, 20th Floor Houston, Texas 77002 713.632.1700 FAX 713.222.0101
900 S Capital of Texas Hwy, Suite 425 Austin, Texas 78746 512.610.4400 FAX 512.610.4401
16000 N Dallas Parkway, Suite 800 Dallas, Texas 75248 214.420.5500 FAX 214.420.5501

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ALLSTATE LOSES MOTION TO REMAND IN HOMEOWNERS' DISPUTE

Last Monday, a federal district court judge remanded a dispute over coverage under a homeowners' policy filed against Allstate Texas Lloyds which raised questions as to an agent's conduct. *Banuelos v. Allstate Texas Lloyd's*, Slip Copy, 2012 WL 3598270 (W.D.Tex. August 20, 2012.) The policyholder sued Allstate, Allstate's "attorney-in-fact," and its agent. Allstate removed the case on the basis of diversity jurisdiction arguing that the joinder of the other defendants was fraudulent. Allstate argued the attorney-in-fact served no role and committed no action that would subject the attorney-in-fact to liability. The dispute over the agent was more complicated. The policyholder alleged the agent recommended a contractor to the policyholder to do the repairs to the home. The contractor was allegedly incompetent and the repairs poorly performed. Allstate and the agent disputed that the agent had recommended the contractor. Applying the rule that factual disputes prevent the court from reaching a fraudulent joinder issue, the court remanded the case.

FIFTH CIRCUIT DENIES EN BANC REVIEW OF INDEPENDENT COUNSEL DECISION

On Wednesday, the Fifth Circuit denied en banc review of the decision in *Downhole Navigator v. Nautilus*. The Fifth Circuit did so without issuing an opinion. Downhole involved the insured's rejection of panel counsel after the insurer issued a reservation of rights letter. Downhole then sued Nautilus for refusing to provide independent counsel. As reported in the Texas Insurance Law Newsbrief on July 20, 2012, the Fifth Circuit held that the insurer did not owe the insured independent counsel. *Downhole Navigator, L.L.C. v. Nautilus Ins. Co.*, --- S.W.3d ---, 2012 WL 2477846, No. 11-20469 (5th. Cir. June 29, 2012).

MDJW WINS BACK-TO-BACK BAD FAITH TRIALS

Last week, USAA won a bad faith trial in Austin, Texas arising out of a tort claimant's attempts to collect on a large default judgment against a USAA member. James Krimbill was involved in an auto accident with Barbara Sloan, a USAA insured, in Austin on Christmas Eve 2006. Sloan gave no notice to USAA of the accident, but the claimant did. USAA paid the property damage claim of the claimant and tried to negotiate a settlement of the bodily injury claims. Krimbill eventually sued Sloan for the negligent entrustment of her vehicle to the driver who caused the accident, but Sloan failed to forward those suit papers to USAA and she never asked for a defense. She never returned repeated phone calls from USAA or replied to multiple letters from her insurer. Krimbill then took a large default judgment against Sloan, filed a turnover action to take over her insurance rights against USAA, and then brought a bad faith claim in Travis County against USAA. It went to trial last week in Austin.

After jury selection, the plaintiff presented its case over the course of several days. After Plaintiff rested, USAA moved for a directed verdict arguing that prejudice existed as a matter of law under these circumstances and Plaintiff's contract and bad faith claims could not go to the jury. After extensive

argument and deliberation, Judge Rhonda Hurley of the 98th District Court of Travis County granted USAA's motion for directed verdict and ruled in its favor on all claims.

Chris Martin from the firm's Houston office tried the case along with Patrick Kemp and Rob Russell from the firm's Austin office. We wish to congratulate USAA on its win and for having the courage to stand on its rights and try this case. It was the firm's second win in a Texas bad faith trial in the last two weeks.

MDJW UNIVERSITY: FIRST FRIDAY WEB SEMINAR INDEPENDENT COUNSEL ISSUES IN TEXAS: RECENT RULINGS & RECENT TRENDS

On Friday, September 7th, the free "First Fridays" web-conference will continue at 12:00 noon Central with a one hour discussion of the Independent Counsel Doctrine in Texas. The program will be led by Jamie Cooper, a Partner in the Insurance Practice Group at MDJW. Jamie will discuss the practical implications on liability carriers created by recent Texas decisions discussing when an insured is entitled to independent counsel including the recent decision of the Fifth Circuit in *Downhole Navigator* (discussed above), a case handled by Jamie and the firm in both the trial court and the court of appeals. .

One hour of free CE credit will be available to all insurance professionals who pre-register for the program. To register, send an email to ce@mdjwlaw.com and simply state you would like to register for the First Friday seminar on September 7th. Or, you can register by calling Cynthia Glenney at 713-632-1737. Anyone with a computer can join the web-seminar at noon Central on September 7th. It will be practical, entertaining and informative so we hope you will join us on September 7th for the continuation of another great class from MDJW University.

NEWSBRIEF TO RESUME SEPTEMBER 10th

Our research and writing staff will be taking off this upcoming Labor Day weekend to enjoy time with family and friends and the Texas Insurance Law Newsbrief will resume publication on Monday, September 10, 2012. We wish each of our readers a safe and happy Labor Day weekend!

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom, L.L.P.
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