The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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COURT FINDS NO DUTY TO DEFEND - NO "PERSONAL & ADVERTISING INJURY" OR "PROPERTY DAMAGE"

Last Tuesday, in *Burlington Insurance Company v. Superior Nationwide Logistics, Ltd, et al*, 2010 WL 3155916 (S.D.Tex, August 10, 2010), the United States District Court for the Southern District of Texas held that Burlington Insurance Company had no duty to defend, because the underlying lawsuit did not allege "personal and advertising injury," or "property damage."

With respect to the defendants' claim that the underlying plaintiff made slanderous and libelous statement which constituted "personal and advertising injury," the Court held that slander and libel fell within the scope of "personal and advertising injury." But, the Court held that the statements were excluded from coverage under the policy because they were made *with knowledge*. The Court relied on the fact that the underlying plaintiff alleged that the defendants conspired to commit the libelous and/or slanderous statements and, therefore, these statements could not be considered to be made only carelessly or recklessly.

The defendants further alleged that the underlying plaintiff alleged an "occurrence" through its allegation that the defendants "demanded the return of Office Supplies" and the defendants wrongfully refused to return them. The Court held that this was essentially an allegation of conversion and was not an "occurrence" under the policy, which was necessary for a finding of coverage.

COURT FINDS FAILURE TO DISCLOSE MATERIAL FACTS ON POLICY APPLICATION SUPPORTS RESCISSION OF POLICY

Last Thursday, the Houston Court of Appeals upheld an insurance company's decision to rescind an automobile insurance policy based upon the fact that the insured failed to disclose that his seventeen year old daughter resided with him. In *Perez v. Old American County Mutual Fire Insurance Company*, 2010 WL 3168389 (Tex.App. – Houston [14th Dist.] August 12, 2010), the insured allowed his unlicensed daughter drive his vehicle, and she was involved in a car accident. During the insurer's investigation of the accident, it discovered that the daughter resided with the insured and rescinded the policy.

The Trial Court held that the insurer relied on the insured's non-disclosure and the policy was properly rescinded and, therefore, the insurer had no duty to defend or indemnify the insured. The plaintiff challenged the legal sufficiency of the evidence, arguing that the insurer presented no evidence that the insured intended to deceive or had actual knowledge that he was required to disclose that his seventeen year old daughter resided with him. The Court held that, because the insured signed the application for the insurance policy, under Texas law he is presumed to know its contents. In addition, the Court held

that the insured's intent to deceive was conclusively established by his deemed admissions. Therefore, the Court affirmed the trial court's judgment.