



The Weekly Update of Texas Insurance News  
**TEXAS INSURANCE LAW NEWSBRIEF**



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## **FEDERAL COURT SAYS NO DUTY TO DEFEND AND NO DUTY TO REIMBURSE OTHER CARRIER FOR DEFENSE COSTS**

In *American National County Mutual Insurance Company v. Travelers Indemnity Company of Connecticut*, No. 4:09-00340 (S.D. Tex. 06/22/10), the court held that Travelers' policy's other insurance provision, which stated that it was an excess policy, controlled. The court then granted summary judgment to Travelers on both points in its motion - it did not owe a duty to share in the defense and it did not have to reimburse ANMIC for its defense costs.

In the case, Earl Wingerter crashed his car into another car, killing one person and injuring four. The survivors sued Wingerter. ANMIC paid to defend him. The survivors also sued his employer, because he was leaving a company event when he wrecked his car. Travelers paid nothing to defend him, saying that it owed nothing until ANMIC exhausted its policy limits. ANMIC argued that Travelers should be required to pay some of the policy limits.

Both policies covered Wingerter, but they had different language. The ANMIC policy requires pro-rata sharing when parallel coverage exists. The Travelers policy becomes excess when other insurance exists.

While holding that the ANMIC policy is primary and the Travelers policy is excess, the court stated that Texas law does not equitably prorate defense costs; instead, the law respects the contracts and enforces the excess clause. Further, the court stated, "equity does not require gratuitous expansion of contractual responsibilities.

**(Editor's Note: Our firm has the privilege of representing Travelers Indemnity Company of Connecticut in this case. For additional information on this order, please contact Jamie Cooper in our Houston office.)**

## **HURRICANE RITA TRIAL TO START TODAY**

Five years after Hurricane Rita blew ashore in southeast Texas, Chris Martin and Wayne Pickering are scheduled to try the first Hurricane Rita insurance case to be tried to verdict in Texas beginning this morning in a Beaumont courtroom. The trial of *John Cahill et al vs. Liberty Lloyds of Texas* will involve questions of whether Hurricane Rita caused property damage to the insured residence and whether Liberty Lloyds' investigation and claims handling decisions were proper. Plaintiffs seek contractual and extra-contractual damages. The Mostyn Law Firm represents the insureds while our firm has the privilege of representing Liberty Lloyds. We will update our readers in future editions on the result of this hurricane trial.

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