

TEXAS INSURANCE LAW & LITIGATION ALERT

Oct. 31, 2011

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News & Filings

Insurers dispute claim for \$11.9 million in business interruption losses

Aspen Specialty Insurance Co. and **Alterra Excess & Surplus Insurance Co.** have filed a lawsuit alleging they do not owe business interruption coverage after a fire that occurred in December 2009.

The insurers were excess carriers for **Utex Industries Inc.** Utex suffered fire damage to an industrial plant and press it operated that manufactured gaskets used in oil wells. Utex exhausted its primary insurance and submitted an excess claim for \$11.9 million in business interruption losses, alleging it lost 10% of the market share for its product as a result of the fire.

However, the insurers allege that Utex actually suffered no reduction in gross earnings recoverable under the policy. As such, they allege that their business interruption coverage does not apply.

Aspen Specialty Ins. Co. v. Utex Indus. Inc., No. 11-3566 (S.D. Tex. *complaint filed* Oct. 5, 2011)

Counsel for Aspen: Mark A. Youngjohn, Brook F. Minx, **Donato Minx Brown & Pool P.C.**, 713-877-1112, Houston.

Hartford disclaims coverage of oil recycling company's contaminated gas claim

Hartford Casualty Insurance Co. has filed a lawsuit alleging that its insurance policy does not provide coverage for a loss arising from contaminated fuel.

Hartford provided insurance for **Seals & Packing Inc.** Seals contracted with **Oil Re-Refining Co.** (ORRC) to sell used oil. The oil was supposed to be free of contaminants.

However, ORRC found that the oil was not as described. It demanded that Seals pay the costs of replacing the oil and for damaged equipment where the oil had been used. Hartford alleges that it does not owe coverage because of an exclusion in its policies for pollutants.

Hartford Cas. Ins. Co. v. Seals & Packing Inc., No. 11-2571 (N.D. Tex. *complaint filed* Sept. 29, 2011)

Counsel for Hartford: Christopher Martin, **Martin Disiere Jefferson & Wisdom L.L.P.**, 713-632-1700, Houston.

House considers earthquake insurance bill

The U.S. House of Representatives is considering a measure entitled the Earthquake Insurance Affordability Act.

H.R. 3125, introduced by Rep. John Campbell, would increase the affordability of earthquake insurance by guaranteeing private market debt issued by state programs that offer catastrophic earthquake coverage. The Act would allow programs to replace some expensive reinsurance with other forms of debt to back up policies.

Currently, more than 75 million people live in regions that are prone to earthquakes. Less than 10% of all homes in California, Campbell's home state, are protected by insurance. The Senate is considering a similar measure—S.637—introduced by California Senator Dianne Feinstein.

Legislation & Agency Actions

Insurer fined for violation of workers' comp regulations

The Texas Workers' Compensation Insurance Commissioner fined **ACE American Insurance Co.** \$40,000 for workers' compensation claims handling violations including failure to timely process medical bills, pay temporary income benefits or respond to requests for reconsideration. This is the fourth fine levied against ACE by the Texas Insurance Commissioner this year. **Indemnity Insurance Co. of North America** and **Pacific ACE American**, other ACE companies, were also fined. In total, the companies paid nearly \$340,000 in fines in 2011.

Regulators set workers' comp weekly benefit rates

Texas insurance regulators announced that the workers' compensation state average weekly wage is \$787.47. State law provides that the average weekly wage equals 88% of the average weekly wage as computed annually by the Texas Workforce Commission. The rate applies to the time period of Oct. 1, 2011 through Sept. 30, 2012. As such, the maximum weekly income benefits rates are \$747 and the minimum weekly benefit rates are \$118 for that period. The rates vary by income benefit type.



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Court Decisions

Breach of Contract

Misrepresentation

Disability

Coverage description not controlling over terms of disability policy

Tolbert v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., No. 09-10730 (5th Cir. Sept. 16, 2011)

The Fifth U.S. Circuit Court of Appeals affirmed a district court's grant of summary judgment in favor of a disability insurer in an action brought on behalf of an insured for wrongful denial of a claim for permanent total disability benefits. An ambiguous coverage description contained in the policy's "descriptions of coverage" was not controlling over the terms and conditions of the policy.

Tommy Tolbert sustained a traumatic brain injury in an auto accident, rendering him unable to make major life decisions. Tolbert's daughter, Helen Tolbert, on Tolbert's behalf submitted a claim for permanent total disability benefits under each of two policies issued to her father by **National Union Fire Insurance Co.**

National Union denied the claims, and Helen on behalf of her father sued National Union for violations of the Texas Deceptive Trade Practices Act (DTPA) and breach of contract. Helen contended that the descriptions of coverage issued in connection with the policies extended such coverage, while National Union argued that such coverage was not provided under the terms of the policies, which differed from the descriptions of coverage. A district court granted summary judgment in favor of National Union, and Tolbert appealed.

Policy terms control over summary description. The Fifth Circuit held that the definition of permanent total disability contained in the descriptions of coverage was ambiguous and could be interpreted so as to extend the benefits

sought by Helen. Under applicable Texas Appellate Court precedent, however, such an ambiguity was not an adequate basis for a claim against an insurer under the DTPA, which required an allegation of an unambiguous, false statement or representation concerning the nature of policy benefits.

The Fifth Circuit separately concluded that, under Texas law, when a document describing policy coverage specifically stated that it was subject to the terms and conditions of the policy, the policy controlled over the ambiguous or contrary terms of the document containing the coverage description. As a result, Helen was not able to base a breach of contract claim on her allegation concerning the contrary coverage description contained in the descriptions of coverage. Accordingly, the district court's grant of summary judgment in favor of National Union was affirmed.

Counsel for Tolbert: James Leroy Johnson, **Johnson Law Firm**, 214-363-1629, Dallas.

Counsel for Nat'l Union: Wade Crosnoe, **Thompson Coe**, 512-708-8200, Austin, Tex.; Harrison Henry Yoss, **Thompson Coe**, 214-871-8259, Dallas.

Excess Coverage

Unjust Enrichment

Marine

Excess insurer's obligations not triggered absent exhaustion of primary policy limits

Gabarick v. Laurin Maritime (Am.) Inc., No. 10-30886 (5th Cir. Aug. 9, 2011)

The Fifth U.S. Circuit Court of Appeals reversed a district court's order requiring two excess insurers to pay prejudgment interest on a \$9 million deposit made to the court in connection with an interpleader action. Because the primary policy had not been exhausted, the excess insurers were under no obligation to make payments on their policies or related prejudgment interest payments.

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On July 23, 2008, the M/V Tintomara struck the DM-932, which was towing the M/V/ Mel Oliver, resulting in an oil spill in the Mississippi River. **American Commercial Lines L.L.C. (ACL)** owned the DM-932, and **DRD Towing Co. L.L.C.** operated the Mel Oliver. The incident gave rise to several lawsuits against ACL and DRD Towing.

DRD maintained \$1 million of primary liability insurance coverage under a policy with **Indemnity Insurance Co. of North America (IICNA)**, and held \$9 million of excess coverage with **Houston Casualty Co.** and IICNA (the excess insurers).

IICNA as the primary insurer filed an interpleader action seeking a declaration of rights and obligations under the policy. The excess insurers later filed a separate interpleader action and sought leave to deposit their \$9 million policy limit with the court. ACL opposed the motion, contending that the excess insurers should be required to pay prejudgment interest on the interpleaded funds because they unreasonably delayed in depositing them with the court.

The district court granted ACL's motion and ordered payment of \$495,369. The excess insurers appealed.

Primary policy not exhausted. The Fifth Circuit noted ACL conceded that the primary policy was not exhausted by payment of judgments and settlements at the time the excess insurers filed their action. The Fifth Circuit concluded that, based on the plain language of the excess policies, the excess insurers had no obligation to make any payment under their policies.

Under these circumstances, the excess insurers could not be found to have unreasonably delayed filing their interpleader action, nor were they unjustly enriched by any failure to file their action earlier. Accordingly, the district court's judgment was reversed, and the action was remanded for further consistent proceedings. (For a related case, see 8 TXIL 162, Sept. 15, 2011.)

Exclusions

Duty to Defend	Public Liability
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“Interrelated wrongs” exclusion bars coverage of civil rights claim against county

Reeves County v. Houston Cas. Co., No. 08-09-0256 (Tex. App. Sept. 14, 2011)

The Texas Court of Appeal affirmed a trial court's judgment on the pleadings in favor of a liability insurer in an action brought by its municipal government insured seeking coverage of an underlying civil rights claim brought by a bail bondsman. Coverage of the underlying claim was precluded as a result of the applicability of the policy's "interrelated wrongs" exclusion.

In 2001, Pascual Olibas sued Reeves County and its sheriff alleging the defendants violated his civil rights by interfering with his ability to operate as a bail bondsman in the county in retaliation for his exercising his right of free speech and right to redress grievances under the First Amendment.

The action was settled, and in 2005, Olibas again sued the county and the sheriff alleging that, following the settlement, the sheriff consistently favored competing bail bond firms in a manner that violated the settlement, and did so in retaliation for Olibas' prosecution of the 2001 action.

The county tendered defense and indemnity of the action to its non-profit organization liability insurer, **Houston Casualty Co.**

Houston disclaimed coverage, and the county and sheriff sued Houston for wrongful denial of claim. A trial court granted summary judgment in Houston's favor, and the county and sheriff appealed.

Action “interrelated” with allegations supporting earlier claim. The court of appeal found that the coverage for the wrongful acts allegedly committed by the insureds was precluded under an “interrelated wrongful acts” exclusion contained in the policy. Both the 2001 and 2005 action alleged wrongful retaliatory acts committed by the sheriff arising from Olibas' assertion of his constitutional rights. Moreover, both actions were private and involved the same parties and the same or similar alleged wrongful actions.

As a result, under the plain language of the policy, the 2005 action was deemed to have arisen from wrongful acts committed prior to the commencement of the policy period, which was on Dec. 1, 2004. Any claims relating to the 2005 suit were thus not covered under the policy and, accordingly, the trial court's judgment in favor of Houston was affirmed.

Counsel for county and sheriff: Ruben Robles, Angela Morrow Nickey, **Robles Bracken & Hughes L.L.P.**, 915-544-1144, El Paso, Tex.

Counsel for Houston: Kay J. Hazelwood, Steven R. Rech, Todd M. Foss, **Schwartz Junell Greenberg & Oathout L.L.P.**, 713-752-0017, Houston.

Misrepresentation

Premiums	Flood
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Allstate insured alleges misrepresentation as to policy reinstatement following Hurricane Katrina

Campo v. Allstate Ins. Co., No. 10-30837 (5th Cir. Sept. 1, 2011)

The Fifth U.S. Circuit Court of Appeals reversed a district court's judgment in favor of a flood insured in a negligent misrepresentation action brought by the insured against his insurer arising from the insurer's denial of a Hurricane Katrina-related claim. In deciding not to pay his premium the insured could not justifiably rely on representations by the insurer that his claim would be covered by his expired policy.

Merlin Campo maintained a Standard Flood Insurance Policy (SFIP) issued by **Allstate Insurance Co.** as a write-your-own (WYO) carrier participating in the National Flood Insurance Program (NFIP). On June 28, 2005, based on unpaid premiums, Allstate mailed Campo an expiration notice which informed him that he could retroactively renew his policy for the 2005-2006 policy period without a gap in coverage

by paying a \$1,237 premium within a 30-day grace period that ended Sept. 13, 2005.

Hurricane Katrina destroyed Campo's home on Aug. 29, 2005, before the end of the grace period. Because of Katrina, the Federal Emergency Management Agency extended the grace period for retroactively renewing policies for 90 days, making the deadline for Campo's payment Dec. 12, 2005.

Although Campo and Allstate had numerous conversations prior to Dec. 12, 2005, and Allstate provided Campo with a \$2,500 check for living expenses, Allstate did not inform Campo of the deadline, which passed without Campo's payment of the premium due. Allstate thereafter denied coverage, and Campo sued Allstate for negligent misrepresentation. A district court found in Campo's favor, and Allstate appealed.

The Fifth Circuit concluded that the district court erred by finding that Campo justifiably relied on any of its representations when he failed to pay the insurance premium. The terms of the SFIP clearly provided that Campo would be without coverage once his policy expired unless he retroactively reinstated it.

Under applicable Louisiana law, an insured's reliance on an insurer's misrepresentation is not justifiable when the terms of the policy clearly reveal that the alleged misrepresentation was inaccurate. As a result, despite any representation by Allstate that Campo's loss would be covered by his expired policy or the \$2,500 payment, it was not reasonable for Campo to rely on those representations in deciding not to pay his premium. Accordingly, the district court's judgment was reversed.

Counsel for Campo: Walter Rimmer Woodruff Jr., **Bopp Law Corp.**, 985-727-6022, Mandeville, La.; Lance V. Licciardi, **Nicosia Licciardi & Nunez**, 504-279-1000, Chalmette, La.

Counsel for Allstate: Gerald Joseph Nielsen, John Dennis Carter, **Nielsen Law Firm L.L.C.**, 504-831-5034, Metairie, La.; Michael D. Breinin, **Nielsen Law Firm L.L.C.**, 985-807-3776, Mandeville, La.

Potentiality of Coverage

Evidence	Workers' Comp
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Evidence not sufficient to support entitlement under statute to lifetime income benefits

Ins. Co. of the State of Pa. v. Muro, No. 09-0340 (Tex. Aug. 26, 2011)

The Texas Supreme Court reversed a court of appeal's judgment affirming a trial court judgment in favor of workers' compensation insured who sued her insurer for wrongful denial of a claim for lifetime income benefits arising from injuries sustained in a workplace accident. The benefits sought required a showing that injuries were directly sustained to the claimant's hand or feet, and not that she sustained a loss of use of her hands or feet as a result of injuries to other parts of her body.

Carmen Muro was seriously injured at work in 1996 when she slipped and fell, resulting in injuries to her hips, lower back and neck. Her injuries resulted in several surgeries, including the replacement of both hips, a surgical fusion and other procedures. Muro was rendered incapable of working,

and sought lifetime income benefits under an applicable state statute from her employer's workers' compensation insurer, the **Insurance Co. of the State of Pa.** (ICSOP).

ICSOP denied coverage, and the denial was affirmed by a hearings officer and the Texas Workers' Compensation Commission (TWCC). After exhausting her administrative remedies, Muro sued ICSOP for wrongful denial. The case was tried, and a jury found Muro to have sustained the total and permanent loss of both feet, qualifying her for benefits under the statute. ICSOP appealed, and the court of appeal affirmed (see 6 TXIL 71, Apr. 30, 2009). The supreme court granted certiorari.

Showing of injury to specific body parts required. The supreme court found that under the statute, lifetime income benefits for loss or lost use of certain body parts, including a worker's feet, were limited to statutorily enumerated injuries, and an employee cannot be considered to have lost use of a body part within the meaning of the statute without some evidence of an injury to that body part.

The supreme court further held that, in the absence of physical injuries to her hands or feet, the injuries to Muro's hips, back and neck, which limited her ability to use her feet and right hand, did not render her eligible for lifetime income benefits. Accordingly, the court of appeal's judgment was reversed, and judgment was rendered in favor of ICSOP.

Counsel for ICSOP: Robert D. Stokes, 512-435-2150, Austin, Tex.; Kevin MacEwan, **Flahive Ogden & Latson**, 512-477-4405, Austin, Tex.

Counsel for Muro: Chad Michael Ruback, **Ruback Law Firm**, 214-522-4243, Dallas.

Exclusions	Title
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Title insured's alleged unmarketability of property not caused by covered defect in title

MGD Ptrs. L.L.C. v. First Am. Title Ins. Co., No. 10-31043 (5th Cir. Sept. 8, 2011) *unpublished*

The Fifth U.S. Circuit Court of Appeals affirmed a district court's summary judgment in favor of a title insurer in an action brought by an insured alleging wrongful denial of a claim for coverage arising out of an alleged servitude of the property created by prior government use. The alleged unmarketability of the property was caused not by a defect in title, but by the condition of the property and, as a result, coverage was not triggered under the policy.

MGD Partners L.L.C. in connection with its purchase of real estate in Tangipahoa Parish, La., purchased a title insurance policy from **First American Title Insurance Co.** The policy generally insured MGD against defects in title to the property.

MGD later learned that the property had been under lease to the U.S. Government during World War II for use as a bombing range, and that the remnants of bombs remained on the property. Because of the potential hazard from the bombs, local government officials refused to issue permits to MGD to develop a residential subdivision on the property.

MGD contended that a servitude was created on the property in favor of the U.S. government under a Louisiana statute providing that a servitude existed where a public body takes position of property and constructs a facility on the property with the consent or acquiescence of the property owner. MGD further contended that the property was rendered unmarketable by the presence of the bomb remnants.

MGD sued First American alleging that these circumstances established a defect in title, triggering coverage under the policy. A district court granted summary judgment in favor of First American, and MGD appealed.

Policy coverage not triggered. The Fifth Circuit concluded that the marketability problem faced by MGD was not due to a defect in title, but rather was because of the condition of the property. The Fifth Circuit did not need to determine whether a servitude existed under Louisiana law because this risk was not covered by First American's title policy.

Moreover, servitude was not reflected in the public records and would be excluded from coverage under an applicable policy exclusion. Accordingly, the district court's judgment in favor of First American was affirmed.

Counsel for MGD: James F. Willeford, Reagan L. Toledano, **Willeford Law Firm**, 504-322-1488, New Orleans.

Counsel for First Am.: Steven W. Copley, Donna Phillips, **Currault Gordon Arata McCollam Duplantis & Eagan L.L.P.**, 504-582-1111, New Orleans.

Settlements

Breach of Contract

Professional Liability

Settlement agreement not enforceable as a result of non-compliant execution

Cunningham v. Zurich Am. Ins. Co., No. 02-09-0177 (Tex. App. Sept. 15, 2011)

The Texas Court of Appeal affirmed a trial court's summary judgment in favor of two liability insurers in an action brought by a third party alleging breach of a settlement agreement governing the third party's malpractice claims against medical service provider insureds. Because the settlement agreement did not comply with an applicable state rule of civil procedure, it was not enforceable against the insurers.

Robert Cunningham sued Dr. Noble Ezukanma, **HealthFirst Medical Group P.A.** and others for malpractice, and secured a trial court judgment against Ezukanma and HealthFirst jointly and severally for over \$1 million. Ezukanma and HealthFirst appealed.

While the appeal was pending, settlement negotiations took place between Cunningham, Ezukanma, HealthFirst, Ezukanma's insurer, **Texas Medical Liability Insurance Underwriting Association**, also referred to as the Joint Underwriting Association (JUA), and HealthFirst's insurer **Zurich American Insurance Co.**

Although a settlement was reached between the two insurers and Cunningham, the parties later disputed whether the

settlement included an agreement by Cunningham to release Dr. Ladi Haroona from liability. Zurich and JUA asserted that no meeting of the minds had occurred with respect to the settlement, and refused to sign any related final order. Cunningham sued Zurich and JUA for breach of contract. A trial court granted summary judgment in favor of Zurich and JUA, and Cunningham appealed.

Email did not comply with applicable requirements.

The court of appeal concluded that the email sent by Zurich's representative to Cunningham's attorney failed to comply with an applicable rule of the Texas Rules of Civil Procedure governing the execution of legally valid settlement agreements. The email contained no graphical representation of the Zurich representative's signature, whether an "s" followed by the representative's typed name, or otherwise.

Because the email contained no marking executed or adopted by Zurich's attorney evidencing an intent to sign the email, the court of appeal concluded that it did not comply with the applicable rule. Accordingly, the court of appeal affirmed the trial court's grant of summary judgment in favor of Zurich and JUA.

Counsel for Zurich: Paul J. Van Osselaer, **Van Osselaer & Buchanan L.L.P.**, 512-225-2800, Austin, Tex.

Counsel for Cunningham: Katherine S. Youngblood, **Youngblood & Assocs. P.L.L.C.**, 713-850-7797, Houston.

Subrogation

Breach of Contract

Workers' Comp

Doctor failed to exhaust administrative remedies before suing patient's insurer

Osborn v. ACE Am. Ins. Co., No. 10-09-0046 (Tex. App. Sept. 14, 2011)

The Texas Court of Appeal affirmed a trial court's grant of a workers' compensation insurer's plea to the jurisdiction in a subrogation action brought by a physician for wrongful denial of a claim for payment for medical services provided to a workers' compensation claimant. The physician failed to exhaust his administrative remedies prior to filing suit.

Dr. Charles Osborn provided treatment to Wanda Johnson, a workers' compensation claimant, and submitted a bill for his services to Johnson's workers' compensation insurer, **ACE American Insurance Co.** Ace disclaimed coverage, and Osborn as Johnson's subrogee sued Ace for breach of contract.

A trial court granted ACE's plea to the jurisdiction after concluding that Osborn did not exhaust his administrative remedies. Osborn appealed.

The court of appeal noted that it was undisputed that Osborn did not seek medical dispute resolution. As a result, based on an applicable statute, the threshold question before the court was whether Osborn was required to exhaust administrative remedies prior to filing suit.

Care not provided within certified network. The court found that ACE presented sufficient evidence conclusively

establishing that Osborn did not provide healthcare for Johnson within a certified workers' compensation healthcare network as required to assert jurisdiction absent a showing that administrative remedies were first exhausted. As a result, the burden of proof shifted to Osborn to present evidence sufficient to raise a fact issue.

Although Osborn presented evidence that he provided healthcare to Johnson within a network of some type, he did not present evidence that this care was provided within a certified workers' compensation network. As a result, the court of appeal concluded that the trial court did not err in sustaining Ace's plea to the jurisdiction, and its judgment was sustained.

Counsel for ACE: John V. Fundis, **Downs Stanford P.C.**, 214-748-7900, Dallas.

Law Journals

Examining changes required in marine insurance policies as a result of increased Somali pirate attacks

Laura L. Hardy, *Ordering Chaos at Sea: Preparing for Somali Pirate Attacks through Pragmatic Insurance Policies*, 55 St. Louis U. L.J. 665 (2011)

Since 2006, the number of attempted and successful attacks by Somali pirates has increased substantially in the Gulf of Aden, a common shipping route used to transport oil. Unlike traditional pirates, Somali pirates threaten human lives and demand ransom payments. Because this is a new form of piracy, it is unclear where or how it is covered in marine insurance policies. Laura L. Hardy outlines the international response to piracy off the coast of Somalia and recommends ways that insurers can best protect their clients' interests when contracting for voyages in that area.

There are several steps that insurers can take to revise marine policy clauses in order to clarify coverage with respect to piracy. Since each venture poses a unique set of risks, insureds must have the ability to select the necessary coverage by picking and choosing from existing policy language. The term piracy should be redefined to include hostile acts against the ship or her crew for the purpose of extorting money, not just traditional hostile acts against the ship to procure the goods onboard. In addition, insurers could offer a specific Gulf of Aden clause providing special coverage for kidnapping and ransom demands. This clause would pass the costs on to those who desire to use the Gulf of Aden for travel despite the additional risks of doing so.

Paying ransom should be considered a last resort because it validates the pirates' actions and is condemned by the United Nations. However, the constant threat to human life makes paying ransoms difficult to resist. Although the United States, as a member of the United Nations, cannot condone paying ransoms, some sort of temporary government fund could help alleviate the high cost of insuring against such attacks and keep sea traffic moving through the shortest travel routes.

Insurers also could require certain behaviors or procedures before negotiating with pirates in order to incentivize preparation and competence among their clients. For example, insurers could require that ship management take anti-piracy courses and show that they were traveling in the internationally recommended transit corridor before meeting any ransom demands made by Somali pirates.

Somali pirates have created uncertainty within the marine insurance industry. Insurers should anticipate the worst and clarify language in marine insurance policies to explicitly provide for who is to pay what and when. The author contends that insurers could accomplish risk and cost spreading more efficiently with better-tailored and more specific policies.

Docket + Trak™ - Part I

Insurance Plaintiffs

Original Declaratory Actions Filed in the Federal District Courts **By** Insurance Companies

Insurance Company Plaintiffs	Citation	Counsel
Admiral Ins. Co.	Admiral Ins. Co. v. Petron Energy Inc. , No. 11-CV-2524 (N.D. Tex. filed 9/27/11)	For Admiral Ins. Co.: David C. Wilkerson, Rymer Moore Jackson & Echols P.C. /Houston, 713-626-1550
Allstate Ins. Co.	Allstate Ins. Co. v. Brownsville Cmty. Fellowship Inc. , No. 11-CV-0204 (S.D. Tex. filed 10/4/11)	For Allstate Ins. Co.: Marc Alan Young, Cokinios Bosien & Young /San Antonio, 210-293-8710
Aspen Specialty Ins. Co.	Aspen Specialty Ins. Co. v. Utex Indus. Inc. , No. 11-CV-3566 (S.D. Tex. filed 10/5/11), <i>Other Parties: Alterra Excess & Surplus Ins. Co. (P)</i>	For Aspen Specialty Ins. Co.: Mark A. Youngjohn, Donato Minx Brown & Pool P.C. /Houston, 713-403-8118
Certain Underw'rs at Lloyd's, London	Certain Underw'rs at Lloyd's, London v. Moore , No. 11-CV-0625 (E.D. Tex. filed 9/28/11)	For Certain Underw'rs at Lloyd's, London: William B. Davis, Adams & Reese /Houston, 713-652-5151
Encompass Indem. Co.	Encompass Indem. Co. v. Pittard , No. 11-CV-0194 (N.D. Tex. filed 9/30/11)	For Encompass Indem. Co.: Jacquelyn A. Chandler, Thompson Coe /Dallas, 214-871-8237

Source: *Insurance Law & Litigation Week* research. (P) = plaintiff, (D) = defendant.

Docket★Trak™ – Part I

Insurance Plaintiffs (continued)

Insurance Companies Plaintiffs	Citation	Counsel
First Mercury Ins. Co.	First Mercury Ins. Co. v. Get Lucky L.L.C. , No. 11-CV-3431 (S.D. Tex. filed 9/21/11)	For First Mercury Ins. Co.: Brian S. Martin, Thompson Coe/Houston , 713-403-8282
	First Mercury Ins. Co. v. Gilmore , No. 11-CV-0188 (E.D. Tex. filed 10/7/11)	For First Mercury Ins. Co.: Brian S. Martin, Thompson Coe/Houston , 713-403-8282
Great Am. Ins. Co.	Great Am. Ins. Co. v. Thomas , No. 11-CV-3473 (S.D. Tex. filed 9/23/11), <i>Other Parties: United Truckers Ass'n (D)</i>	For Great Am. Ins. Co.: R. Brent Cooper, Cooper Scully P.C./Dallas , 214-712-9500
Hartford Cas. Ins. Co.	Hartford Cas. Ins. Co. v. Seals & Packing Inc. , No. 11-CV-2571 (N.D. Tex. filed 9/29/11)	For Hartford Cas. Ins. Co.: Christopher W. Martin, Martin Disiere Jefferson & Wisdom/Houston , 713-632-1700
Hartford Steam Boiler Inspection & Ins. Co.	Hartford Steam Boiler Inspection & Ins. Co. v. Danbury Holdings Inc. , No. 11-CV-0795 (W.D. Tex. filed 9/26/11), <i>Other Parties: Danbury Aerospace Inc. (D)</i>	For Hartford Steam Boiler Inspection & Ins. Co.: Marie K. Miller, Cavaretta Katona & Francis P.L.L.C./San Antonio , 210-588-2901
Hudson Ins. Co.	Hudson Ins. Co. v. CH2MHill , No. 11-CV-3583 (S.D. Tex. filed 10/7/11)	For Hudson Ins. Co.: David C. Wilkerson, Rymer Moore/Houston , 713-626-1550
James River Ins. Co.	James River Ins. Co. v. Mid-Cont'l Ins. Agency Inc. , No. 11-CV-3400 (S.D. Tex. filed 9/19/11), <i>Other Parties: Mid-Cont'l Ins. Agency Inc. (D); Woodhollow Ptrs. Ltd. (D)</i>	For James River Ins. Co.: Franklin M. Kennedy, Thompson Coe/Dallas , 214-871-8222
Lincoln Gen. Ins. Co.	Lincoln Gen. Ins. Co. v. Reyes , No. 11-CV-0393 (W.D. Tex. filed 9/26/11), <i>Other Parties: Los Paisanos Buses Inc. (D)</i>	For Lincoln Gen. Ins. Co.: Richard M. Kuntz, Ruberry Stalmack & Garvey/Chicago , 312-466-8050
Nautilus Ins. Co.	Nautilus Ins. Co. v. Bolton , No. 11-CV-3558 (S.D. Tex. filed 10/4/11)	For Nautilus Ins. Co.: Aaron Mark Pool, Donato Minx Brown & Pool P.C./Houston , 713-877-1112
Scottsdale Ins. Co.	Scottsdale Ins. Co. v. O'Brien , No. 11-CV-3499 (S.D. Tex. filed 9/27/11), <i>Other Parties: In His Care Inc. (D)</i>	For Scottsdale Ins. Co.: Peri Hayriye Alkas, Phelps Dunbar L.L.P./Houston , 713-626-1386
Star Ins. Co.	Star Ins. Co. v. Budco Drilling Co. , No. 11-CV-3474 (S.D. Tex. filed 9/23/11)	For Star Ins. Co.: Robert A. Shults, Lugenbuhl Wheaton/Houston , 713-222-1990

Source: *Insurance Law & Litigation Week* research. (P) = plaintiff, (D) = defendant.

Docket★Trak™ - Part II

Insurance Defendants

Original Declaratory Actions Filed in the Federal District Courts **Against** Insurance Companies

Insurance Companies Defendants	Citation	Counsel
Allstate Texas Lloyd's	Wade v. Allstate Texas Lloyd's , No. 11-CV-0638 (E.D. Tex. filed 10/5/11)	For Allstate Texas Lloyds: David G. Allen, Stacy & Conder/Dallas , 214-748-5000; For Donovan Wade: Douglas T. Floyd, Plano, Tex., 972-378-3807
Commerce & Ins. Co.	StarPark Corp. v. Commerce & Ins. Co. , No. 11-CV-3572 (S.D. Tex. filed 10/6/11)	For StarPark Corp.: David H. Brown, Brown & Kornegay L.L.P./Houston , 713-528-3703
Colonial Life & Accident Ins. Co.	Martin v. Colonial Life & Accident Ins. Co. , No. 11-CV-0432 (E.D. Tex. filed 9/26/11)	For Autumn Martin: Rex A. Nichols Jr., Nichols & Nichols/Longview, Tex. , 903-757-2464
Mid-Cont'l Ins. Agency Inc.	James River Ins. Co. v. Mid-Cont'l Ins. Agency Inc. , No. 11-CV-3400 (S.D. Tex. filed 9/19/11), <i>Other Parties: Woodhollow Ptrs. Ltd. (D)</i>	For James River Ins. Co.: Franklin M. Kennedy, Thompson Coe/Dallas , 214-871-8222
UNUM Group	Taylor v. UNUM Group , No. 11-CV-2602 (N.D. Tex. filed 10/3/11)	For : Billy Taylor: Daniel W. Ray, Scott Money & Ray P.L.L.C./Greenville, Tex. , 903-454-0044

Source: *Insurance Law & Litigation Week* research. (P) = plaintiff, (D) = defendant.

Docket★Trak™ - Part III

Transfers Into Federal Courts

Declaratory Actions Transferred Into The Federal District Courts

Insurance Company Parties	Citation	Court Of Original Filing	Counsel
ACE Am. Ins. Co.	Hashempour v. ACE Am. Ins. Co. , No. 11-CV-0129 (S.D. Tex. filed 10/6/11), <i>Other Parties: Gallagher Bassett Serv. Inc. (D); Diversimed Inc. (D)</i>	Tex. Dist. Ct., Webb Cty., No. 2011-CV001161D4	For ACE Am. Ins. Co.: Alicia G. Curran, Cozen O'Connor /Dallas, 214-462-3021; For Ray Hashempour: James C. Plummer, Plummer & Kuykendall /Houston, 713-522-2887
Aetna Life Ins. Co.	Mayden v. Aetna Life Ins. Co. , No. 11-CV-0519 (E.D. Tex. filed 9/30/11), <i>Other Parties: Aetna Health Inc. (D); Aetna Inc. (D)</i>	Tex. Dist. Ct., Gregg Cty., No. 2011-1956	For Aetna Life Ins. Co.: Dimitri D. Zgourides, Andrews Kurth L.L.P. /Houston, 713-220-4152; For Whitney Mayden: Brent W. Bull, Zelle Hofmann Voelbel & Mason L.L.P. /Dallas, 903-212-7005
Allstate Indem. Co.	Clemons v. Allstate Indem. Co. , No. 11-CV-0394 (W.D. Tex. filed 9/26/11), <i>Other Parties: Pilot Catastrophe Servs. Inc. (D)</i>	Tex. Dist. Ct., El Paso Cty., No. 2011CV1071	For Allstate Indem. Co.: Jamie M. Cohen, Doyle Restrepo Harvin & Robbins L.L.P. /Houston, 713-228-5100; For Pilot Catastrophe Servs. Inc.: Barbara J. Barron, Mehaffy & Weber /Beaumont, Tex., 409-835-5011; For Crance Clemons: David A. Christoffel, Arguello Hope & Assocs. P.L.L.C. /Galveston, Tex., 409-497-4574
Allstate Ins. Co.	Gana v. Wolverton , No. 11-CV-0438 (S.D. Tex. filed 9/20/11), <i>Other Parties: Allstate Ins. Co. (D)</i>	Tex. Dist. Galveston Cty., No. 11-CV-1373	For Allstate Ins. Co.: Michelle Benavides, Baker & Hostetler L.L.P. /Houston, 713-751-1600; For Bradley J. Gana: Frederick F. Hoelke, Boerne, Tex., 210-444-0999; For Steve Wolverton: David S. Perlmutter, Orange, Cal., 800-821-0540
Allstate Tex. Lloyd's	Foster v. Allstate Tex. Lloyd's , No. 11-CV-3477 (S.D. Tex. filed 9/23/11)	Tex. Dist. Ct., Harris Cty., No. 2011-49646	For Allstate Tex. Lloyd's: Roger D. Higgins, Thompson Coe /Dallas, 214-871-8256
Amerisure Ins. Co.	Harris Acoustics Ltd. v. Amerisure Ins. Co. , No. 11-CV-0196 (N.D. Tex. filed 10/4/11)	Tex. Dist. Ct., Taylor Cty., No. 47,943-A	For Amerisure Ins. Co.: Russell J. Bowman, Bowman & Stella /Dallas, 214-922-0220; For Harris Acoustics Ltd.: H. Alan Carmichael, Steakley Wetsel & Carmichael /Sweetwater, Tex., 325-235-4944
Catlin Ins. Co.	Ramirez v. Catlin Ins. Co. , No. 11-CV-3563 (S.D. Tex. filed 10/5/11)	Tex. Dist. Ct., Harris Cty., No. 2010-58955	For Catlin Ins. Co.: Richard H. Gateley, Brackett & Ellis /Ft. Worth, Tex., 817-338-1700; For Ernest Ramirez: Patrick C. McGinnis, Houston, 713-343-1614
Fed. Ins. Co.	City of Midland v. Fed. Ins. Co. , No. 11-CV-0105 (W.D. Tex. filed 9/30/11)	Tex. Dist. Ct., Midland Cty., No. CV-48242	For Fed. Ins. Co.: Bryan P. Vezey, Cozen O'Connor /Houston, 832-214-3900; For City of Midland: Brian M. Catalano, Cotton Bledsoe Tighe & Dawson P.C. /Midland, Tex., 432-684-5782
Great Am. Ins. Co.	Sky King Found. Inc. v. Great Am. Ins. Co. , No. 11-CV-2645 (N.D. Tex. filed 10/7/11)	Tex. Dist. Ct., Dallas Cty., No. 11-11099	For Great Am. Ins. Co.: Thomas L. Woodman, Greenberg Traurig L.L.P. /Dallas, 214-665-3608; For Sky King Found Inc.: Paul K. Stafford, Stafford Law Firm /Dallas, 214-880-4882
Hartford Life & Accident Ins. Co. I	Dickerson v. Hartford Life & Accident Ins. Co. , No. 11-CV-2535 (N.D. Tex. filed 9/27/11)	Tex. Dist. Ct., Dallas Cty., No. DC-11-10332	For Hartford Life & Accident Ins. Co. I: Theodore C. Schultz, Lindow Stephens Treat L.L.P. /San Antonio, 210-227-2200; For Lia Dickerson: R. Jack Ayres Jr., Addison, Tex., 972-991-2222
Lancashire Ins. Co.	Galveston Wharves Bd. of Trustees v. Lancashire Ins. Co. , No. 11-CV-3394 (S.D. Tex. filed 9/19/11), <i>Other Parties: Lexington Ins. Co. (D); York Risk Servs. Group (D); Allied World Assur. Co. (D)</i>	Tex. Dist. Ct., Galveston Cty., No. 11CV1330	For Lancashire Ins. Co. Ltd.: Daryl G. Dursum, Adams & Reese L.L.P. /Houston, 713-652-5151; For Lexington Ins. Co.: Raymond L. Gregory, Eggleston & Briscoe /Houston, 713-659-5100; For Board of Trustees of Galveston Wharves: Joseph R. Russo Jr., Greer Herz /Galveston, Tex., 409-797-3200
Lexington Ins. Co.	7900 Bellaire Apts. I Ltd. v. Lexington Ins. Co. , No. 11-CV-3472 (S.D. Tex. filed 9/23/11)	Tex. Dist. Ct., Harris Cty., No. 2011-52226	For Lexington Ins. Co.: William J. Eggleston, Eggleston & Briscoe /Houston, 713-659-5100
	Metro Hospitality Ptrs. Ltd. v. Lexington Ins. Co. , No. 11-CV-3569 (S.D. Tex. filed 10/5/11)	Tex. Dist. Ct., Harris Cty., No. 2011-53462	For Lexington Ins. Co.: Richard R. Dunn, Clouse Dunn /Dallas, 214-220-0077; For Metro Hospitality Ptrs. Ltd.: Ruben Alcantara, Houston, 713-589-4920
Ohio Cas. Ins. Group	Martwick v. Ohio Cas. Ins. Group , No. 11-CV-3501 (S.D. Tex. filed 9/27/11)	Tex. Dist. Ct., Harris Cty., No. 11-49660	For Ohio Cas. Ins. Group: John M. Kressenberg, Sheehy Ware /Houston, 713-951-1036; For Edward Martwick: Anthony G. Buzbee, Houston, 713-223-5393
Scaffold Indus. Co. Risk Retention Group	Vargas v. Scaffold Indus. Co. Risk Retention Group , No. 11-CV-0855 (W.D. Tex. filed 9/29/11)	Tex. Dist. Ct., Travis Cty., No. D-1-GN-11-002359	For Scaffold Indus. Co. Risk Retention Group: Michael F. Nelson, Burt Barr & Assocs. /Dallas, 214-943-0012; For Lissette I.M. Vargas: Douglas P. Skelley, Shidlofsky Law Firm P.L.L.C. /Austin, Tex., 512-685-1400
Sentry Ins. Co.	Bellard v. Sentry Ins. Co. , No. 11-CV-0681 (N.D. Tex. filed 9/26/11)	Tex. Dist. Ct., Tarrant Cty., No. 96-249254-10	For Sentry Ins. Co.: Russell J. Bowman, Bowman & Stella /Dallas, 214-922-0220; For Breshanica Bellard: David B. Joeckel Jr., Ft. Worth, Tex., 817-924-8600
State Farm Ins. Co.	Mata v. State Farm Ins. Co. , No. 11-CV-0452 (S.D. Tex. filed 9/30/11), <i>Other Parties: State Farm Lloyd's (D)</i>	Tex. Dist. Ct., Brazoria Cty., No. 60889	For State Farm Lloyd's: Joseph F. Nistico Jr., Nistico Croubh & Kessler P.C. /Houston, 713-781-7222; For Hipolito Mata: Christopher C. Pinkerton, Pinkerton Law Firm P.L.L.C. /Webster, Tex., 281-332-2002

Source: *Insurance Law & Litigation Week* research. (P) = plaintiff, (D) = defendant.

Docket★Trak™ - Part III

Transfers Into Federal Courts (continued)

Insurance Company Parties	Citation	Court Of Original Filing	Counsel
State Farm Lloyd's	Denfip v. State Farm Lloyd's , No. 11-CV-0474 (E.D. Tex. filed 9/20/11)	Tex. Dist. Ct., Liberty Cty., No. CV1104769	For State Farm Lloyd's: Kathleen Crouch, Nistico Crouch & Kessler /Houston, 713-781-2889; For Kay Denfip: Mark J. Beausoleil, Beausoleil Law Group /Liberty, Tex., 936-336-6275
State Farm Mut. Auto. Ins. Co.	Duran v. State Farm Mut. Auto. Ins. Co. , No. 11-CV-0411 (W.D. Tex. filed 10/4/11)	Tex. Dist. Ct., El Paso Cty., No. 11-02130	For State Farm Mut. Auto. Ins. Co.: Ruben S. Robles, Robles Bracken & Hughes /El Paso, Tex., 915-544-1144; For Rosa Duran: David Duran, El Paso, Tex., 915-534-0227
	Kimes v. State Farm Mut. Auto. Ins. Co. , No. 11-CV-2435 (N.D. Tex. filed 9/19/11)	Tex. Dist. Ct., Dallas Cty., No. CC-11-04373-B	For State Farm Mut. Auto. Ins. Co.: Janet K. Colaneri, Colaneri Firm P.C. /Arlington, Tex., 817-640-1588; For Larry W. Kimes: Hardin R. Ramey, Ramey Law Firm /Dallas, 972-437-5700
	Rolling Oaks Ranches Inc. v. State Farm Mut. Auto. Ins. Co. , No. 11-CV-2614 (N.D. Tex. filed 10/4/11)	Tex. Dist. Ct., Dallas Cty., No. DC-11-03799	For State Farm Mut. Auto. Ins. Co.: Armando De Diego, Dallas, 214-426-1220; For Rolling Oaks Ranches, Inc.: Jason Edward Choe, Choe Walker /Dallas, 214-565-9810
Underw'rs at Lloyd's, London	Pro-Fab Framing Inc. v. Underw'rs at Lloyd's, London , No. 11-CV-0225 (N.D. Tex. filed 9/19/11)	Tex. Dist. Ct., Potter Cty., No. 99829-A	For Underw'rs at Lloyd's, London: Ronald E. Tigner, Cozen O'Connor /Houston, 832-214-3900; For Pro-Fab Framing Inc.: Dennis R. Burrows, McCleskey Harriger /Lubbock, Tex., 806-796-7360

Source: *Insurance Law & Litigation Week* research. (P) = plaintiff, (D) = defendant.

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