

TEXAS

In re Slavonic Mut. Fire Ins. Ass'n, --- S.W.3d ----, 2010 WL 1236333 (April 1, 2010)

There was no evidence in the record constituting waiver of the right to appraisal: no evidence that Slavonic denied liability or that it would refuse to pay the amount of loss that would be determined by appraisal or of the requisite intent necessary to establish waiver.

Bryce v. Unitrin Preferred Ins. Co., Not Reported in S.W.3d, 2010 WL 1253579 (April 1, 2010)

Replacement value and responsibility in insuring to value

Washington Mut. Bank v. Commonwealth Land Title Ins. Co., Not Reported in S.W.3d, 2010 WL 135685 (January 14, 2010)

Insured was not entitled to reimbursement for judgment against it because it had failed to comply with the policy's notice-of-suit provision and the insurer was prejudiced by the judgment. The insured asserted that, while it had failed to notify the insurer of the entered judgment until four months after entry, the insurer had not established that it was prejudiced by the judgment and thus the insured was still entitled to reimbursement. Prejudice to the insured was presumed as a matter of law because the insurer had been denied the opportunity to defend its position and because the insured had made no efforts to defend against the claims that led to the entry of judgment.

Woodward v. Liberty Mut. Ins. Co., Slip Copy, 2010 WL 1186323 (N.D.Tex. March 26, 2010).

Insurer's motion to compel appraisal granted where previous attempt was not completed in substantial compliance with the requirements imposed by the appraisal clause of the homeowners policy.

Manzano v. Nationwide Property and Cas. Ins. Co., Slip Copy, 2010 WL 1268056 (S.D.Tex. March 26, 2010)

Federal jurisdiction was proper

New Bethlehem Missionary, Baptist Church v. Church Mut. Ins. Co., Slip Copy, 2010 WL 936477 (S.D.Tex. March 11, 2010)

Federal jurisdiction was not proper

Sanchez v. Property and Cas., Insurance Co. of Hartford, Slip Copy, 2010 WL 413687 (S.D.Tex. January 27, 2010)

Hartford waived an appraisal by failing to invoke the right for almost an entire year after Sanchez filed his claim and Hartford completed its investigation and adjusting process, and declined payment. Hartford has produced no evidence that its delay in requesting an appraisal was due to a good faith attempt to ascertain the amount of damages.

Sanchez v. Property and Cas., Slip Copy, 2010 WL 107606 (S.D.Tex. January 07, 2010)

Sanchez's counsel sought to use information from the claims file in the instant litigation and in other cases. Hartford opposed shared discovery and moved for a protective order preventing the disclosure outside this litigation of documents it claims

contain confidential and proprietary commercial information and trade secrets. The Court's review of the documents in issue and other matters of record revealed no information that requires protection from disclosure in this or other cases. However, the Court noted its Memorandum and Order did not address the right of Plaintiff Sanchez (or other insureds) to maintain the confidentiality of his own information or to decline to permit counsel's disclosure or use in other cases of documents concerning the insured.

LOUISIANA

Halmekangas v. State Farm Fire and Cas. Co., --- F.3d ----, 2010 WL 1407683 (5TH Cir. April 9, 2010).

Action not properly removed to federal court.

Finger v. Audubon Ins. Co., (La. Civil District Court, Orleans Parrish, March 23, 2010).

Insurer denied coverage for Chinese Drywall claim based on pollution exclusion, gradual or sudden loss exclusion, and inadequate or defective planning exclusion. The court held that none of the exclusions applied and struck the affirmative defenses.

“The [pollution] exclusion does not, and was never intended, to apply to residential homeowners claims for damages caused by substandard building materials. . . . The fact that Chinese drywall releases various gases into the home is not sufficient to qualify as a “pollutant” under the pollution exclusion”

“The...losses relate to the drywall off-gasing, not by wear, tear and/or gradual deterioration...[T]he corrosion caused...by the sulphurous gases released by the Chinese Drywall is the loss, not the cause of the loss....One of the...characteristics of Chinese drywall is that, while it off-gases, it performs all of the expected functions of drywall, such as fire protection, sounds and heat insurlation....”

Chisesi v. Auto Club Family Ins. Co., Slip Copy, 2010 WL 785173 (5th Cir. March 9, 2010)

Claim dismissed and sanctions imposed for failure to comply with discovery obligations.

Property Ins. Ass'n of Louisiana v. Theriot, 2010 WL 1177440 (La. March 16, 2010)

Fire insurance rating organization, Property Insurance Association of Louisiana, is a private, not public, entity.

Thibodeaux v. Louisiana Citizens Property Ins. Corp., 2010 WL 502797 (La.App. 1 Cir. February 12, 2010)

Certification of a class was appropriate in an insured's action to recover application fees from an insurer.

Eddy v. State Farm Fire and Cas. Co., 2010 WL 1424374 (La.App. 1 Cir. April 09, 2010)

Given the trial court's finding that State Farm was not misled or deceived, which is not clearly wrong, Eddy was not barred from amending or supplementing his petition

to add “other claims,” as he is entitled to do pursuant to La. C.C.P. arts. 1151 and 1155. Costs of appeal were assessed against State Farm Fire.

McMullen Builders, L.L.C. v. Kinney Ins. Agency, L.L.C., 2010 WL 817340 (La.App. 3 Cir. March 10, 2010)

Fire caused severe damage to a structure owned by McMullen Builders, who then asserted that representatives of Kinney Agency negligently failed to obtain fire insurance coverage on the structure, thus causing McMullen Builders significant damages. Court affirmed the judgment jury verdict in favor of Kinney and the trial court's judgment awarding the defendants \$2,600.00 in expert witness fees. All costs of the appeal to accessed to McMullen.

Harvey Canal Ltd. Partnership v. Lafayette Ins. Co., --- So.3d ----, 2010 WL 785937 (La.App. 5 Cir. March 09, 2010)

Evidence that the Hurricane Katrina left insured's roof in position to fail in less significant event did not constitute improper new theory of liability; insurer was not prejudiced by testimony of insured's expert in field of public adjusting; insured's general manager's testimony that the roof “blew out” did not prejudice insurer; insurer was properly penalized for withholding payment of claim more than 60 days; and reasonable basis in record supported jury's award of \$3,640,000 for actual damages.

Willwoods Community v. Essex Ins. Co., --- So.3d ----, 2010 WL 1462117 (La.App. 5 Cir. April 13, 2010)

Excess Insurance payments: Trial court's judgment awarding penalties in the amount of \$2,354,432.50 to Willwoods affirmed. The trial court's judgment awarding judicial interest to Willwoods remanded for a calculation of legal interest to run from November 30, 2006 until the date each tender was respectively made. The trial court's judgment awarding attorneys' fees in the amount of \$1,177,216.20 to Willwoods is vacated; on remand, the trial court is ordered to hold an evidentiary hearing for a determination of a reasonable amount of attorneys' fees due Willwoods from RSUI in accordance with this opinion.

Wegener v. Lafayette Ins. Co., --- So.3d ----, 2010 WL 830967 (La.App. 4 Cir. March 10, 2010)

Evidence was sufficient to support jury's finding that insurer breached its statutory duty of good faith and fair dealing, and arbitrarily, capriciously, or without probable cause, failed to pay amount due insureds; insureds were entitled to award of penalties; evidence of homeowners' receipt of flood insurance proceeds was not relevant to breach of contract action for failure to pay for wind damage; and trial court did not abuse its discretion in failing to grant homeowners a new trial on either peremptory or discretionary grounds.

Frught v. Lafayette Ins. Co., 27 So.3d 270 (La. 2010)

The Supreme Court held that factual issue as to whether policy application contained provision for valuation based on actual cash value (ACV) precluded summary judgment.

Allstate Ins. Co. v. Fred's Inc., 25 So.3d 821 (La. 2010)

Supreme Court reversed the court of appeal decision finding the doctrine of contra non valentem applicable to the facts presented. The court of appeal erred in finding

Allstate's delay “cannot be attributable to its own neglect,” an essential element in a defense to prescription based on this doctrine. Allstate's two-year delay between its discovery request and its motion to compel, plus an additional year before adding Colony to the suit, evidences a lack of due diligence on the part of Allstate, precluding application of the *contra non valentem* doctrine. Accordingly, the decision of the court of appeal was reversed and the case remanded to the court of appeal for consideration of pretermitted issues not addressed in the original opinion.

C'S Discount Pharmacy, Inc. v. Pacific Ins. Co., Ltd., --- So.3d ----, 2010 WL 291759 (La.App. 5 Cir. January 26, 2010)

Genuine issue of material fact existed as to whether receipt of business interruption insurance policy nearly seven months after policy was issued accompanied by letter from insurance agent that did not point out that there was major change in coverage but merely instructed insured to review policy was sufficient to give insured constructive knowledge of major change in coverage, for purposes of accrual of insured's cause of action under one-year preemptive period applicable to actions for damages against insurance agents and brokers, precluding summary judgment in insured's damages action against insurance agent and intermediary broker that assisted in procuring policy, in which insured alleged that business interruption insurance policy in effect at time of alleged losses following Hurricane Katrina was not coverage requested by insured.

MISSISSIPPI

Douzart v. Balboa Ins. Co., Slip Copy, 2010 WL 677804 (5th Cir. February 26, 2010)

Genuine issue of material fact existed regarding whether the Douzarts are entitled to coverage under the homeowner's insurance policy and a genuine issue of material fact exists regarding whether Balboa had an arguable or legitimate basis for denying the Douzarts' claim. Expert's testimony “creates a genuine issue of material fact regarding whether all or part of the damage to the Douzarts' home was caused by an explosion that resulted from a windstorm. Notably, Balboa did not submit any evidence that it actually inspected the Douzarts' home, even after the Douzarts informed Balboa that its adjuster had inspected the wrong house. Further, Balboa failed to produce its own expert report or any other evidence contrary to Dr. Hall's conclusions.

Butcher v. Allstate Ins. Co., Slip Copy, 2010 WL 323885 (S.D. Miss. January 21, 2010).

Prejudgment interest for breach of contract. Allstate filed motion for relief. Issue was when breach occurred for the date to begin running interest. Allstate suggested the date claim was denied. Insured suggested 60 days after the filing of the proof of claim. The court found the insureds suggestion was reasonable and used that date. However the court stated: “Neither side has submitted any case law exactly on point. This Court could have started the running of interest on the date of the loss...”

ALABAMA

Crews v. National Boat Owners Assoc., ___ So.3d ___, 2010 WL 336708 (Ala. January 29, 2010)

Insurer did not waive arbitration by waiting 256 days after filing of complaint to invoke. Waiver is decided on case-by-case basis. Prejudice to the party opposing arbitration is determinative of deciding waiver.