Article

2019 Year in Review: Insurance Law

01.01.20

Texas Bar Journal

In 2019, the Texas Legislature took a shot at the Restatement of the Law of Liability Insurance, approved by the American Law Institute in May 2018. The restatement was highly controversial as it was developed, with policyholders and insurers complaining and criticizing the various drafts. The final approved version drew the focused wrath of the insurance industry, particularly regarding the notion that liability in excess of policy limits could be based on a failure of the insurance company to initiate and pursue settlement, not just as a result of a failure to accept an offer to settle within policy limits.

The Legislature amended the "Rule of Decision Act," Section 5.001 of the Texas Civil Practice and Remedies Code, to provide that "[i]n any action governed by the laws of this state concerning rights and obligations under the law, the American Law Institute's Restatements of the Law are *not controlling*." 1 This appears to simply restate the Texas Supreme Court's approach to consideration of restatements generally. Earlier legislative offerings were much more severe. For example, SB 2303 proposed barring *any consideration* of any Restatement of the Law.

The duty to defend under liability insurance policies is the focus of Texas Supreme Court review of the certified question in *State Farm Lloyds v. Richards*:2 "Is the policy-language exception to the eight-corners rule articulated in *B. Hall Contr. Inc. v. Evanston Ins. Co.,* 447 F. Supp. 2d 634 (N.D. Tex. 2006), a permissible exception under Texas law?" The duty to defend is determined by examining the four corners of the underlying pleadings against the insured and the four corners of the policy. *Hall* holds that the eight-corners rule does not exist if the policy does not state that the duty to defend applies to groundless, false, or fraudulent claims; thus, extrinsic evidence may be used to determine the duty to defend under such policies. Adoption of *Hall* would dramatically rewrite Texas duty to defend law and replace it with detailed coverage trials on extrinsic facts, thus altering the utility of declaratory actions.

The *Hall* exception was urged in *Zurich Am. Ins. Co. v. Nokia, Inc.*3 The *Nokia* court did not adopt this exception and concluded that the eight-corners rule controlled, refusing to recognize an extrinsic evidence exception in that case. Indeed, the 5th Circuit has flatly rejected the *Hall* reasoning in *Guideone Spec. Mut. Ins. Co. v. Missionary Church,*4 finding no authority to support the notion that the "false or fraudulent" language controlled application of the duty to defend and the eight-corners rule.5 "[The Supreme Court] has not written . . . that the eight-corners rule applies only to policies containing such language." 6 The court concluded that the *Hall* reasoning improperly conflated the determination of the duty to defend with the duty to indemnify.

In *Barbara Techs. Corp. v. State Farm Lloyds*,7 the court held that neither an insurer's invocation of appraisal nor its payment of an appraisal award exempted it from the Texas Prompt Payment of Claims Act, or TPPCA. The insurer in that case initially denied the claim. Appraisal was invoked and the carrier paid promptly after the award was made. The court held that payment is "neither an acknowledgment of liability nor a determination of liability under the policy for purposes of TPPCA damages." Thus, absent a judgment imposing liability or actual acknowledgement, the "liability" requirement of the TPPCA is not satisfied and recovery not permitted.

The full article can also be viewed by clicking here.

Primary Contacts

Michael Huddleston
Dallas
214.855.7572
mhuddleston@munsch.com

Related Practices

Litigation
Insurance Litigation

Related Industries

Insurance