



LEGISLATIVE UPDATE

February 22, 2013

Over 2,300 bills have been filed so far this Legislative Session and the TADC is monitoring just over 200 of them, which could have an effect on the civil justice system and the practice of law. Your TADC Legislative Committee has been hard at work analyzing legislation and communicating with the Legislature. Listed below are some anticipated but not yet filed issues as well as several bills of interest that have already been filed. Please do not hesitate to contact the TADC if you have any questions regarding these or any other issues before the Legislature

Anticipated, not yet filed:

Pre-Dispute Arbitration

The Texas Department of Insurance recently solicited comments on a possible rule proposal that would prohibit pre-dispute mandatory arbitration provisions in insurance products, although there is no statutory prohibition of those provisions. According to the Department, the rule would apply to policy-or-contract coverages for individuals for personal noncommercial use. The prohibition would also apply to group or individual forms providing coverage in life, accident and health, annuity, credit, and property and casualty products, including home and auto. Legislation may be proposed this session to block TDI from adopting such a rule without direct authorization from the Legislature.

Made Whole Doctrine

The Texas Supreme Court, in *Fortis Benefits v. Cantu*, 234 S.W. 643(Tex. 2007), held that the “made whole” doctrine did not apply to bar a subrogor’s right to recover contractual subrogation even in those circumstances where the subrogee had not recovered all of his/her damages and had not been “made whole.” We anticipate a bill which will restore, at least in a proportionate sense, the “made whole” doctrine in those cases in which a subrogor asserts a contractual right of subrogation.

Filed:

[HB 930](#)

Rep. Kenneth Sheets (R-Dallas)

HB 930 repeals Subchapter H, Chapter 544, Texas Insurance Code, which restricts an insurer from applying standard underwriting guidelines for water damage claims. The bill also enables claims for losses caused by natural disasters to be made under a standard homeowners, fire, or farm and ranch

owners policies and permits an insurer to assess premium surcharges and increase deductibles in accordance with sound actuarial principles. Finally, the bill provides that an insurer may not refuse to renew a policy unless the insured has filed two or more claims under the policy in any three-year period (current law requires three or more claims) and specifies that an insurer may refuse to renew a policy for reasons other than claims history.

[HB 1325](#)

Rep. Doug Miller (R-New Braunfels)

Actions pending in the MDL on September 1, 2005 (the date the medical criteria requirements took effect) and in which the claimant has not served a report meeting the medical criteria, the MDL court must dismiss the action on motion of a defendant. The claimant may show good cause as to why the action should not be dismissed.

HB 1325 additionally provides that in an action pending on September 1, 2005, in which the claimant does not serve a complying medical report before the later of March 1, 2014 or the 181st day after the date the action is transferred to the MDL court, the court may on its own motion dismiss the action unless a claimant shows good cause to maintain the action. Dismissal is without prejudice. If a claimant subsequently suffers an asbestos or silica-related injury, the claimant may refile the claim under the law as it existed on the date the case was originally filed.

[HB 1126](#)

Rep. Rafael Anchia (D-Dallas)

HB 1126 would establish a public financing system for elections to the Supreme Court, Court of Criminal Appeals, and courts of appeals. Under the proposal, a candidate could request public financing by filing a petition signed by a specified number of qualified voters who also make a minimum contribution to the candidate's campaign. Once the Texas Ethics Commission declares that a candidate has met the eligibility standards, the candidate may start receiving distributions from the fund and may no longer accept contributions from private contributors or benefit from direct campaign expenditures on the candidate's behalf. The fund would be composed of any amounts appropriated or gifted, as well as by civil penalties levied by the commission.

[HB 1254](#)

Rep. Senfronia Thompson (D-Houston)

HB 1254 establishes a regulatory framework for entities that provide funding for consumer litigation. HB 1254 defines a "civil justice funding company" as a person that enters into a contract with a consumer to provide non-recourse financing for the consumer's legal claim in return for a contingent right to receive an amount of the proceeds of a settlement, judgment, award, or verdict obtained on the consumer's behalf. The bill specifies that a civil justice funding transaction may not be considered a loan or subject to state laws governing loans (including limits on interest rates). Moreover, a civil justice funding transaction that complies with this law is not subject to any other state law governing loans or investment contracts. The bill also establishes a list of criteria in order to conduct civil justice funding in Texas.

[HB 1407](#)

Rep. John Smithee (R-Amarillo)

Rep. John Smithee (R-Amarillo), chair of the House Insurance Committee, has filed legislation that requires the commissioner of insurance to adopt rules ensuring “prompt and equitable settlement of a third-party property damage claim.” The bill calls for quick settlement standards in circumstances in which the insured’s liability is reasonably clear, and the amount of the claim is within policy limits. The bill applies to any insurer that delivers, issues for delivery, or renews a Texas private passenger automobile insurance policy. Under the bill, the minimum standards must include reasonable deadlines for the insurer to acknowledge and pay a claim, the required notice the insurer must provide to the claimant or the insured, and the items, statements, and forms that an insurer may require a claimant or insured to submit in relation to the claim. An insurer is required to comply with the standards.

The bill also contains provisions relating to arbitration of claims. A claimant may require an insurer to submit a dispute concerning the payment, amount, or denial of a claim to binding arbitration. A claimant who elects arbitration waives the right to bring an action against the insured or insurer (except to enforce the arbitration award), and agrees to accept payment for the claim within the policy limits. Arbitration is generally governed by Chapter 171, CPRC, though the commissioner shall adopt rules governing the procedures for requesting and conducting an arbitration, for selecting one or more arbitrators to conduct the proceeding, the qualifications of arbitrators, and procedures for the payment of the costs of arbitration. TDI must also compile and maintain a list of qualified arbitrators.

Finally, HB 1407 prohibits an insurer from delivering or renewing a Texas private passenger automobile insurance policy unless the policy or endorsement includes a provision that requires the insurer to participate in binding arbitration under the above provisions.

[HB 1408](#)

Rep. John Smithee (R-Amarillo)

This bill applies exclusively to claims arising under insurance policies issued by the Fair Access to Insurance Requirements (FAIR) Plan Association, which in Texas is a state-run plan, subsidized by private insurance companies, to make property insurance available to those who cannot obtain it in the voluntary market. These plans were originally established by the federal government following the urban demonstrations and riots of the 1960s when it determined that, because of deteriorating social and economic circumstances in urban areas, it became impossible for many business owners and homeowners to purchase property insurance.

The bill proposes to amend Chapter 2211 of the Insurance Code by establishing dispute resolution procedures for property damage claims filed under a FAIR Plan, and by establishing exclusive remedies for a claim against the association, agent or representative. Under the bill, a claimant can bring an action against the association only if the association has denied a claim, and must first submit to mediation or moderated settlement conference under Chapter 154, Civil Practice and Remedies Code. The claimant may then initiate an action in the district court of the county in which the loss occurred.

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to purchase property insurance.

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2013 TADC Spring Meeting

April 3-5, 2013 – DoubleTree Suites Hotel – Austin, Texas

*A Reception honoring the Legislature & Breakfast with
the Supreme Court!*

Don't miss this Meeting *(program link below)*

A *9.5 hr (with 2.0 hrs ethics) CLE Program Featuring:*

The Honorable Lee Yeakel, United States District Court, Austin

The Honorable Jeffrey Boyd, Texas Supreme Court

The Honorable Orlanda Naranjo, 419th District Court, Travis County

and topics ranging from

"Observations from the Bench on Recent Trial Tactics" and

"Expedited Jury Trials: What this means for a Trial Practice" to

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