



The Legal Update

POLICYHOLDER REPRESENTATION

NOVEMBER 2008

IN THIS ISSUE

Ask the Attorney
Page 2

Contingency Fees -
Helpful and Valuable
Page 3

Voters Throw Out
Republican Judges
Page 3

Honesty Is The Best
Policy Page 4

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Problems With Buying Home Insurance

Hurricane Ike brought destruction to Texas homeowners in this area on a scale not seen in over 100 years. But, Ike also revealed a serious problem with the manner in which homeowner's insurance policies are sold and the law. For many Texans, Ike completely destroyed their homes, but their insurance policy limits were insufficient to replace their homes and cover the full extent of their losses.

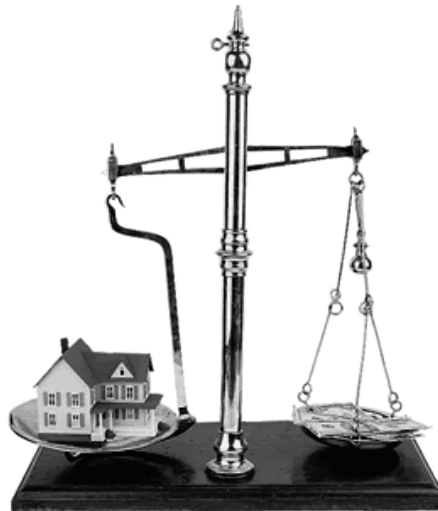
As a result, policyholders and their lawyers are usually left with only the option of attacking insurance companies, brokers and agents for selling replacement cost coverage that falls short of actual replacement costs.

How Policy Limits Are Set

In the real world, there is not a lot of attention that goes into setting the policy limits on a home. Typically, a homeowner will seek insurance coverage over the internet, on the phone or by making an office visit to an insurance agent. The insurance agent will ask the homeowner to identify the features of the home and any special or unusual items. Using standardized insurance company software, the insurance agent, in most cases, calculates the policy limits and premium to be charged for replacement cost coverage based on the square footage of the home and any special features. Purportedly, the software accounts for current area construction costs and the individualized features of a home. Based on the software's determination of replacement cost, the agent sets the policy limits for the dwelling; policy limits for other structures, personal property and loss of use are set as a percentage of the dwelling limit. Accordingly, if the replacement cost is calculated incorrectly, the dwelling's policy limits and the remaining policy limits for other structures, personal property and loss of use are also calculated incorrectly.

But, other potential problems may be lurking as well. Sometimes, the insurance agent may not use the software properly or may input incorrect information as to the features of the home. Sometimes the software's construction cost data is not properly updated to

reflect current construction costs and inflation. In addition, unscrupulous agents, in order to obtain a commission, may intentionally underestimate the replacement cost and quote a lower premium to the prospective insured. Each of these errors and omissions will generate an inaccurate replacement cost estimate and consequently, inadequate policy limits for all major coverage provided in the typical homeowner's insurance policy.



When a disaster such as Hurricane Ike strikes, the policyholder is shocked to learn that the insurance agent miscalculated the replacement cost and he is now underinsured. The formerly friendly agent stops taking his calls and worse yet, sides with the carrier in blaming the insured for not obtaining

sufficient insurance. Betrayed, the policyholder turns to his lawyer only to learn that if he sues to enforce the promises made to him, it may come down to his word against the insurance agent and he may lose.

The Law Places The Burden On The Policyholder To Accurately Determine Policy Limits

In Texas, an insurance agent only owes the client for whom the agent undertakes to procure insurance the following common law duties: (1) to use reasonable diligence in attempting to place the requested insurance; and (2) to inform the client promptly, if unable to do so. In other words, insurance agents have

Continued on Page 2

Ask the Attorney ...



Q: I am having problems getting a fair settlement on my insurance claim, what are my options?

A: If you are having problems with your adjuster, you basically have four options in seeking resolution. First, you can try to get another adjuster assigned to your claim. Often insurance carriers will assign another adjuster to a file upon a request. Second, you can hire a public insurance adjuster. A public insurance adjuster can measure and document your loss in a professional manner that exceeds most homeowner's abilities. However, it is important to pick an established public insurance adjuster with full time

office in this area. There are many stories of incompetent public insurance adjusters that actually harm, rather than help an insured. Contact me for a referral to some reputable public insurance adjusters. Third, if your dispute is determined by the insurance carrier to be a covered claim, you can consider appraisal. I usually recommend against the appraisal process because it is fraught with traps that can take advantage of unwary policyholders and can actually cause you to lose valuable rights. Finally, you have the option to hire an attorney. Attorneys skilled in insurance matters are a comprehensive solution. They can handle all aspects of your claim and enforce your rights under the law in ways that public insurance adjusters and appraisal can not.

If you have a question you would like Mr. Durrett to answer, please email it to bdurrett@sbcglobal.net

Problems With Buying Home Insurance cont.

no duty to advise policyholders that they should purchase different or additional coverage. But, if an agent determines replacement cost limits and represents these limits as adequate when they are not, he will be liable to the insured. Despite recognizing a duty for expressed representations, the courts immunize insurers and insurance agents from liability for *negligently* failing to accurately calculate replacement costs when setting policy limits. The courts hold that it is the homeowner's burden to: (1) determine whether or not their property is adequately insured; (2) to calculate and maintain policy limits that are adequate to fully replace their home and contents in the event of a total loss; and (3) to independently determine whether or not an insurance agent's replacement cost calculations are accurate.

Simply put, the legal burden placed on the backs of policyholders is intolerable. The vast majority of homeowners have no experience in calculating replacement costs. Contrastingly, insurance companies and professionals are in the business of evaluating and accepting risk. Insurers have the knowledge and experience necessary to adjust and pay claims for property losses which requires accurate

knowledge of current construction costs as well as inflation factors related to construction industry. In addition, insurers regularly participate in industry and governmental studies that promulgate safer building practices, codes and standards. As compared to a typical homeowner, the insurer is in a superior position to determine adequate policy limits.

But, the law does not require insurers to assume this burden. The primary reasons given to justify this reasoning are that: (1) the homeowner knows the characteristics of their home and possessions; and (2) the insurer and its agents have a financial interest to sell more insurance; as such, they would not intentionally underinsure their clients. In reality, neither justification is valid. As to the first justification, homeowners only know what they paid for their homes, not the replacement cost. Unless the homeowner regularly works in the residential construction business, the homeowner has no basis to know replacement costs. Furthermore, in the process of setting policy limits, insurers will not generally accept a homeowner's sole determination of replacement costs as a basis for setting policy limits. As to the second justification, it is invalid because most

insurance sales agents would rather gamble by quoting the lowest possible premium to make a sale, even if it means the policyholder is underinsured. It's a safe gamble because statistically few people ever suffer a total loss and even fewer when overwhelmed with a total loss are willing to initiate and prosecute a lawsuit.

A Solution Exists And Is Used In The UIM Insurance Context

The time has come to expand the duties an insurance agent owes a prospective insured. When an insurance company or agent *negligently determines* the policy limits for a homeowner that underinsures the home in the event of a total loss, the insurance company should pay the entire loss despite any policy limits stated in the policy. The law wrongfully protects insurance companies in these situations. Inadequate coverage will continue to harm policyholders until the law is changed to require a clear legal duty for insurers to determine and recommend adequate policy limits for the property insured. If the homeowner rejects the insurer's recommendation, such rejection should be documented, in writing, similar to the process for uninsured/underinsured motorist coverage in Texas today.

New Report Reveals What Auto Insurance Adjusters Don't Want You to Know
Request: How to Determine the Value of A Personal Injury Case by J. Brantley Durrett, III
 It's FREE as a public service to injured TX citizens! Get your copy today by sending an email to bdurrett@sbcglobal.net

Contingency Fees - Helpful and Valuable



Contingency fees offer personal injury clients a valuable advantage. They enable anyone who suffers an injury to bring a lawsuit without having the money up front to pay an attorney. With contingency fees, attorneys agree to accept a portion of the recovery and agree that if the client does not win and there is no recovery, there will be no fee.

Why does the contingent-fee system serve clients and work so well?

Contingent fees ...

- ◆ Give everyone - regardless of race, color religion, national origin, gender, martial status, age and
- ◆ Promote efficiency and discourage frivolous lawsuits by motivating lawyers to make sure that the cases they accept have legitimacy and merit.
- ◆ Are fair, since there is no cost to the client unless he or she wins.
- ◆ Discourage wrongdoers from continuing inappropriate behaviors.

Voters Throw Out Republican Judges

On November 4, 2008, Harris County voters, voting largely along party lines, replaced 20 of 26 Republican judicial district judges with Democrats. Since 1994, the Republicans have dominated the judicial system in Texas and locally. Since these judicial races are determined mainly along party lines, it is believed that they are a barometer of the larger electorate. As a result, noted University of Houston political scientist, Richard Murry believes the next couple of election cycles will be heavily contested by candidates from both parties. "Every race (will) still be contested. Every job in this county, for the next couple of cycles somebody's going to file for it. The days of being unopposed are over."

While it may be unclear whether the results of this election are a changing of the guard or not; the judicial election results have consequences for the litigants in Harris County District Courts. Initially, there will be a transition period where the administration of justice is delayed as new judges take the bench, learn the ropes, and make decisions to replace or retain existing court personnel. However, beyond the initial transition period, it is unlikely any real substantive change will occur. Our laws are made in the legislature and interpreted in the Courts of Appeal and the Supreme Court. The Texas legislature retained a slim Republican majority in the House and the Texas Supreme Court and Courts of Appeal are still largely Republican. Until the Democrats are able to capture these positions, substantive legal changes will be few and far between.

Most of you know that I am a loyal Republican along social and financial issues, but with regard to the law and judicial issues, my politics line up more squarely with the Democrats. So while I am hopeful that fairness and impartiality will return to the courts, I am also concerned that this turn to the left may go to far. Harris County lost a lot of experienced Republican judges this last election cycle, let's hope the Democratic judges can quickly learn to determine disputes with the same degree of proficiency and integrity.





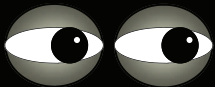
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Look Inside This Issue



- ▶ **Problems With Buying Home Insurance** *Page 1*
- ▶ **Ask the Attorney** *Page 2*
- ▶ **Contingency Fees—Helpful And Valuable** *Page 3*
- ▶ **Voters Throw Out Republican Judges** *Page 3*

Unlike other firms that send clients, associates, and friends an impersonal newsletter that has been created by a service, our newsletter is **100% home-grown**. It is written and designed in-house—by us! **We care enough to send you the REAL DEAL!**



Hailie with Dad at the University of Mississippi

Summer at Ole Miss; Fall at Texas A&M

For Hailie Durrett, a senior at Second Baptist High School, the best thing about this summer was being able to attend the Summer School for High School Students program at the University of Mississippi. At Ole Miss, Hailie attended regular college classes with other students and received six hours of college credit for courses in anthropology and philosophy. She was also able to spend a month free of parental supervision while living on campus in a dorm.

For Dad, Hailie's desire to attend Ole Miss this summer was a positive indication that the many hours spent in advanced early childhood brainwashing techniques might actually begin to pay off. However, Dad's hopes were dashed when Hailie took a trip to Kyle Field to attend the Texas A&M v. Texas Tech football game in October. At this time, she is determining whether to be a Rebel or an Aggie ♦

Honesty Is The Best Policy

It doesn't matter how good your case is, if you lie or omit information about your self or past insurance claims history, etc. the truth will eventually come out and your case will be permanently damaged.

Remember, the insurance companies have access to vast databases about your private life, including past lawsuits, claims and disputes.

Honesty is the best policy. Tell your lawyer all about past claims, damages, etc. Then he can deal with it.

The worst thing is for your lawyer to be the last one to know. ♦

