

Texas Firms Take On Policyholders To Recoup Business

By Jesse Greenspan

Law360, New York (May 17, 2011) -- Despite having little experience in the field, Texas law firms are turning to insurance coverage disputes as a way to recoup business that dried up due to the slow economy and other factors, experts say.

Personal injury, labor and construction boutiques — and even some larger general firms — are suddenly popping up in Texas and elsewhere as counsel for policyholders in disputes with insurance companies, according to experts.

These firms often see insurance cases as another type of contract litigation, and think it would be a relatively easy transition for them, said David Taubenfeld, a Dallas-based partner at [Haynes and Boone LLP](#) who represents exclusively policyholders.

“Some animals are driven out of their normal habitat, and one of the habitats they settle on is one that appears to be, a little bit erroneously, but it appears to be relatively simple and straightforward,” Taubenfeld said.

He added, however, that representing policyholders was not merely a matter of enforcing insurance policies. Attorneys still have to know what buttons to push, how to litigate when published case law is not clear, how insurance companies work, and so forth, according to Taubenfeld.

Mitchell Dolin, a partner in the Washington office of [Covington & Burling LLP](#) and chair of the firm's global insurance recovery practice, said a client might decide to use its regular litigation counsel in a coverage dispute because of what that firm knows about the client's business or a lot about the underlying case. Cost could also play a role.

Or, a firm might go with specialized coverage lawyers who have seen hundreds of fact patterns and know the law inside and out, Dolin said.

“It's both an art and a science,” he said. “It's more than just litigation. It's also knowing the industry, the market practices, and the players, it's knowing what's feasible, what's possible, it's knowing how to value a claim, and most of that comes from experience.”

The number of Texas firms representing policyholders in commercial and residential property damage claims drastically increased after Hurricane Ike, which in 2008 devastated the Gulf of Mexico coastline and many islands in the Caribbean, according to experts.

“There were guys putting billboards up all over town. 'If you've got an Ike claim, call,' ” said Vince Morgan, a Houston-based partner in the insurance recovery and advisory practice group at [Pillsbury Winthrop Shaw Pittman LLP](#). “Some of them were those who were already doing insurance law, and some of them were not.”

The same thing likely happened in New Orleans after Hurricane Katrina, he added.

“I think people realized ... that this could be a lucrative practice even if it's not generated by a natural disaster,” said Glenn R. Legge, a Houston-based partner at Legge Farrow Kimmitt McGrath & Brown LLP who represents foreign underwriters in the London market on energy matters, along with large U.S. commercial policyholders in claims against domestic insurers.

Meanwhile, the economy was trending down sharply around the time of Hurricane Ike, and clients were suddenly looking to cut back on their payments to lawyers.

One byproduct of this downswing was that general litigation counsel were more likely to handle coverage disputes themselves rather than referring them to a specialist, according to Taubenfeld.

Large firms were also more likely to begin competing with small firms for less-complex matters in which lower rates were charged, Taubenfeld said.

Some larger firms switched from representing insurance companies to representing policyholders, or at the very least began taking on policyholder clients when they were able to avoid direct conflicts with their insurance company clients, experts said.

“If you're a large firm and you've got a big stable of clients that may need help on these issues, and only a handful of insurance companies, maybe you make a business decision to do so,” Morgan said.

Yet another part of the shift toward representing policyholders may be that from 2000 to 2007, the Texas Supreme Court was viewed as fairly insurer-friendly, but since then has issued more opinions perceived as favorable to policyholders, Legge said.

There are also provisions in the Texas Insurance Code that are beneficial to policyholders, such as an 18 percent per annum penalty for insurers that violate the prompt payment provision, according to Legge.

It may be that tort reform in Texas in the early 2000s made other practices less lucrative, leading attorneys toward the insurance coverage arena, according to experts. And more tort reform could be forthcoming, including a bill approved by the Texas House of Representatives on May 9 that would put limits on discovery and would affect when a winning defendant can collect attorneys' fees from a plaintiff.

“I think there have been some firms ... that are feeling the pinch, and representing policyholders is an alternative way to generate revenue,” Legge said.

--Editing by Pamela Wilkinson and Greg Ryan.