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Year in Review: Insurance Law

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The biggest insurance news is what almost happened, but didn't, but still might. At the urging of insurance companies and "tort reform" lobbyists, the Texas Legislature considered a pair of bills that would have limited recovery for property damage claims, allowed insurers to force suits into federal court, and immunized insurance company adjusters from liability for unfairly low estimates, while criminalizing excessive estimates by policyholders and their public adjusters.

Senate Bill 1628 by Sen. Larry Taylor and House Bill 3646 by Rep. John Smithee were offered in response to perceived abuses arising from hailstorm claims, but both bills proposed changes that would have affected all property damage claims. The bills died after substantial opposition from businesses and others. SB 1628 passed the Senate but died in the House. HB 3646 died in committee. [See "Diverse Opposition Kills Hailstorm Bill," Texas Lawyer, May 26, 2015].

The issue may come back. The lobbyists supporting the bills have vowed to return in 2017. In the meantime, the Texas Senate and House have added "hailstorm lawsuits" to the list of items to be studied in the interim. [See "Interim Charges Revive Dead Hailstorm, Prompt Pay Bills," Texas Lawyer, Oct. 16, 2015; "House Committee to Study Hot-Button Issues," Texas Lawyer, Nov. 10, 2015].

A more immediate impact will come when the Texas Supreme Court answers a certified question in In re Deepwater Horizon where the U.S. Court of Appeals for the Fifth Circuit asked: "Whether, to maintain a cause of action under Chapter 541 of the Texas Insurance Code against an insurer that wrongfully withheld policy benefits, an insured must allege and prove an injury independent from the denied policy benefits?" This will resolve a growing split between mostly state court decisions that allow recovery of policy benefits as unfair insurance practice damages, and mostly federal decisions that require proof of other damages apart from those caused by the claim denial. [See "Deepwater Horizon Defendant Wins Big Insurance Ruling," Texas Lawyer, Nov. 24, 2015].

Also, in a pair of decisions, the Fifth Circuit recognized the expansive scope of the remedies for violating the Prompt Payment of Claims Act. In Weiser-Brown Operating Co. v. St. Paul Surplus Lines Insurance Co. earlier this year , the court held that the penalty deadline started once the policyholder gave the insurer most, but not all, of the requested information. The court held in Cox Operating v. St. Paul Surplus Lines Insurance Co., that violating any of the statutory deadlines for acknowledging, investigating, and accepting or rejecting a claim would trigger the 18 percent penalty, meaning the penalty applies to all deadlines, not just the payment deadline.

Mark L. Kincaid, a partner with Austin-based George Brothers Kincaid & Horton, represents policyholders and businesses. He testified against the insurance bills noted above on behalf of the Texas Trial Lawyers Association.