



The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF



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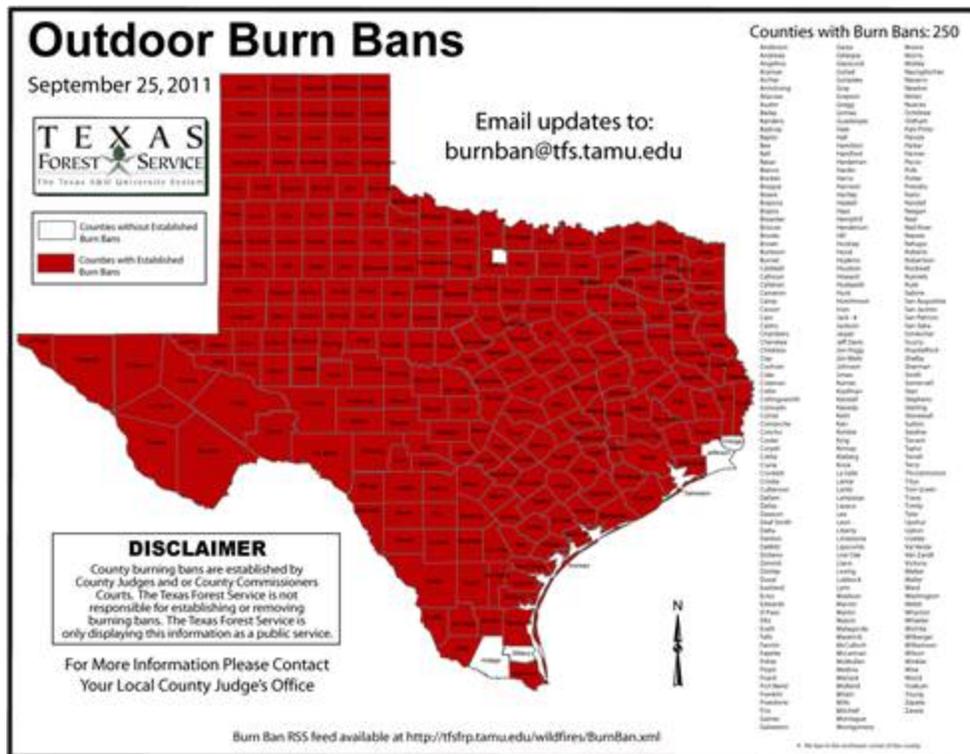
September 26, 2011

HOUSTON COURT OF APPEALS DECLINES TO COMPEL TRIAL JUDGE TO ABATE DISCOVERY IN HURRICANE CASE PENDING APPRAISAL

Last Tuesday, in *In re Cypress Texas Lloyds*, No. 14-11-00726-CV, 2011 WL 4367140, the Houston 14th Court of Appeals declined to grant Cypress Texas Lloyds' writ of mandamus which requested the Court compel the trial court judge — the Honorable Mike Miller (presiding judge over all Hurricane Ike pre-trial matters) — to abate the litigation pending appraisal. This case arises from a dispute over the amount of covered losses under a homeowner's insurance policy. The trial court granted Cypress Texas Lloyds' motion to compel appraisal, but denied its motion to abate litigation pending appraisal. The carrier then filed a mandamus. The Court of Appeals relied on the Texas Supreme Court's recent opinion in *In re Universal Underwriters of Texas Ins. Co.*, No. 10-0238, 2011 WL 1713278, (Tex. May 6, 2011), in which it determined that "[t]he trial court's failure to grant the motion to abate is not subject to mandamus, and the proceedings need not be abated while the appraisal goes forward." The Court of Appeals found, therefore, that Cypress Texas Lloyds had not established entitlement to the extraordinary relief of a writ of mandamus.

TEXAS WILDFIRES CONTINUE TO AFFECT TEXAS INSURERS

According to the Texas Forest Service, since wildfire season began last year, fires have burned almost 3.8 million acres in Texas and destroyed 2,742 homes. 250 of the 254 Texas counties are reporting burn bans:



On September 9th, the Federal Emergency Management Agency (FEMA) issued a major disaster declaration for six Texas counties (Bastrop, Colorado, Houston, Leon, Travis, and Williamson) impacted by wildfires that began in the area on August 30th. Also in September, Gov. Rick Perry renewed his wildfire emergency declaration for the ninth time since it was initially issued on December 21, 2010.

But, on September 23, 2011, TDI released a bulletin denying a petition for determination of catastrophe regarding the Texas Wildfires. The bulletin provided that “a determination of a weather-related catastrophe or major natural disaster for the purpose of claims processing is not warranted at this time. The above-mentioned Petition is hereby denied and all claims resulting directly from the above-mentioned event shall be processed pursuant to the deadlines provided in Texas Insurance Code, Chapter 542, Subchapter B.” That bulletin can be located at <http://www.tdi.texas.gov/bulletins/2011/cc39.html>.

This TDI ruling is significant because CAT teams working the fires in Texas are not governed by the 30-day time deadlines as are most CAT operations in Texas. Instead, the standard 15-day and 15-business day deadlines apply to fire claims until expressly modified by TDI. We will continue to track these developments and report on them as they change.

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom L.L.P.
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