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Insured's Claim Against Excess Insurer Was Not Supported By Sufficient Evidence. *Spring Creek Village Apartments Phase V, Inc. v General Star Indemnity Co.* Plaintiff-primary insurance carrier filed a declaratory judgment action seeking to have an appraisal award declared invalid (the award estimated the amount needed to repair Defendant's apartment complex after a tornado). Defendant filed a third party petition action against its excess insurance carrier after it refused to pay the \$1,105,790 requested in excess of the \$1,000,000 primary coverage. The trial court granted partial summary judgment in favor of Defendant holding that the appraisal award was binding but also held that Defendant had no cause of action against its excess carrier for breach of the duty of good faith and fair dealing. Jury trials were held that found the appraisal award was no longer binding; the total amount of tornado-related property damage had a replacement cost value of \$444,492 and an actual cash value of \$377,818. Because the

damages found did not reach the excess carrier's layer of coverage, the trial court's take-nothing judgment in the excess carrier's favor was affirmed by the Court of Appeals.

Default Judgment May Not Be Granted, Without Notice To A Defendant Who Has Purportedly Answered. *Sells v. Drott.* Drott sued Sells for specific performance of a contract, to buy Sell's property. Sells filed a facially valid answer and amended answer valid. After hearing evidence that the may or may not have been actually signed by Sells (or someone purporting to be her next friend), the trial court struck the answer and amended answer without prior notice to Sells, that the validity of the answers was disputed. After the trial court's decision was affirmed by the court of appeals, the Texas Supreme Court reversed, vacating default judgment and remanding the case to the trial court finding that regardless of whether the trial court had some evidence to support striking the answers on file for Sells, the trial court was required to give Sells notice and an opportunity to present evidence and argument, before striking the answers and granting a default judgment. Sells was entitled to an opportunity to prove that the defects alleged in her pleadings were not true or not fatal, or to argue that she had a right to cure the defects if possible.

The Supreme Court went on to find that failure to comply with the signature requirement in an answer is a curable irregularity. The signature to a pleading is a formal requisite and failure to comply with the requirement is an irregularity, that may allow the pleading to be stricken upon motion, or to be treated as a nullity by the court; but it is one which does not operate to the injury of the opposing party, and therefore, its amendment (curing the defect by providing the appropriate signature) cannot prejudice the challenging party's rights upon the trial of the cause.

Defective Hospital Lien Not Enforceable. *Methodist Hospitals of Dallas v Mid-Century Insurance Co.* Claimant was involved in a car accident with a person insured by Mid-Century Ins. Co. Claimant was taken to Methodist Hospital, where she was treated for her injuries, incurring charges in the amount of \$8,656. After Claimant received a settlement, Methodist filed a written notice of lien for medical services, listing Claimant as the person injured and incorrectly as the person liable for the bill, rather than Mid-Century. Methodist sued Mid-Century and its insurer to enforce its lien. The Court of Appeals affirmed summary judgment for Mid-Century, finding that Methodist's notice of lien did not meet statutory requirements (wrong person liable, wrong amount, wrong date of accident).

Plaintiff Injured At Railroad Crossing Was Negligent Per Se. *Kelly v Brown.* The Court of Appeals upheld summary judgment in favor of Defendant-railroad, finding that Plaintiff, who failed to yield to a train at a crossing marked by crossbuck signs and collided with a train, failed to raise a fact issue on her defense of excuse in avoidance of

Defendant's affirmative defense of negligence per se.

Impeachment Of A Fact Witness With Her Mental Health History Was Harmful Error. *Torres v Danny's Service Co., Ltd.* Trial regarding an auto accident in which Plaintiff attempted to pass Defendant-truck driver from behind as he slowed to make a left turn. Plaintiff suffered fatal injuries when she took evasive action, lost control and flipped her vehicle. The jury found Plaintiff 70% negligent and D 30% negligent. The Court of Appeals reversed and remanded finding that the trial court committed reversible error by allowing Defendant to impeach a fact witness who was a passenger in a car traveling behind Plaintiff's by introducing evidence of the mental health history of the witness (she was taking two drugs for depression and panic attacks and received Social Security disability).

Firefighter Driving Truck That Injured Plaintiffs Acted Recklessly and Was Not Entitled To a Limitation Of Liability or Indemnification. *Green v Alford.* In a case arising from a traffic accident in which a fire truck collided with another vehicle, causing adult Plaintiff to sustain a broken neck causing permanent neurological damage to minor Plaintiff (the nine year old son of the adult Plaintiff) the Court of Appeals affirmed the trial court's finding that the firefighter driving the truck, acted recklessly and was therefore not entitled to official immunity or a limitation of liability. Defendant-firefighter had poor vision and was driving without glasses or corrective lenses as required by his driver's license. He also may have entered the intersection without using a siren and failed to establish that he acted in good faith. Additionally, he is not entitled to a statutory limitation of liability and the City is not

authorized to indemnify Defendant because he was found to be grossly negligent.

Insured's Award Was Limited to Three Times Actual Damages. *Insurance Corp. of Hannover v Polk.* In a dispute regarding the insured death of a racehorse and whether the illness causing death (colitis) was related to the injury that occurred during the policy period (surgery for fractured knees). The trial court awarded Plaintiff actual damages in the amount of \$40,000 and extra-contractual damages under the Insurance Code in the amount of quadruple the amount of actual damages. The trial court also awarded Plaintiff's attorney's fees, prejudgment interest on the actual damages awarded, postjudgment interest and court costs. The Court of Appeals modified the judgment to reflect a total damages award of \$120,000 on Plaintiffs' Insurance Code claims finding that the trial court erred in quadrupling the actual damages in its award.

New Trial Ordered--Defaulting Defendants Belief Default Would Not be Taken During Ongoing Settlement Negotiations was a Valid Excuse Why They Failed To Timely Answer. *Diagnostic Clinic of Longview, P.A. v Neurometrix, Inc.* The Court of Appeals held the trial court erred in denying Defendants' motion for new trial after a default judgment was rendered against them in this breach of contract case concerning the sale of medical equipment. The Court held that Defendants satisfied the requirements for setting the default aside by providing a plausible excuse for failing to timely answer because they were engaged in ongoing conversations and settlement negotiations and believed no action would be taken toward default while those discussions were taking place.

Trial Court Abused Its Discretion in Prohibiting Counsel from Interviewing Discharged Jurors Following Mistrial. *In re State Farm Lloyds.* The Dallas Court of Appeals found that the trial judge abused his discretion in prohibiting counsel from speaking with or contacting discharged jurors in a first party insurance case following a mistrial in which the jury was unable to agree on a verdict. Absent a finding that contact with the jurors would cause imminent and irreparable harm to the judicial process and that the prohibition on contact with the jurors would be the least restrictive means of preventing that harm, the trial court's prohibition on juror contact was improper and an abuse of discretion. The trial judge explained that contact with the jurors would cause harm to both parties and expressed his belief that the case was tried fairly and that he did not want the parties speaking with the jurors and then basing their strategy for a second trial on the juror's feedback, potentially causing trial the second time to not be "fair". Despite this reasoning, the Court of Appeals reversed and allowed the parties to speak with the discharged jurors.

DID YOU KNOW...ODD LAWS THAT ARE ACTUALLY ON THE BOOKS:

- In New York City it is illegal to shake a dust mop out a window.
- In the state of Washington it is illegal to catch a fish by throwing a rock at it.
- It is illegal to lie down and fall asleep with your shoes on in North Dakota.

SEE YOU NEXT MONTH!