

Fifth Circuit Update: Insurance, Real Estate and NLRB (Oh My!)

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Many thanks to [Jason Shyung](#), blog contributor and recent Fifth Circuit clerk, for lending a hand in compiling this material, because the [Fifth Circuit](#) has been **busy** this holiday season. It has released a number of opinions that should be of interest to civil practitioners:

- [Cal-Dive Int'l, Inc. v. Seabright Ins. Co.](#) (pdf) reverses a district court's determination that Seabright Insurance Company had a duty to defend a certain personal-injury lawsuit. The court found that Seabright was absolved from any duty to defend the lawsuit because:

(1) Seabright's policy included a "Protection and Indemnity" exclusion that removed from coverage any injuries covered by another protection and indemnity policy; and

(2) it was undisputed that such a policy existed and covered the injuries at issue. Judge Davis wrote the court's opinion.

- [Overstreet v. El Paso Disposal, L.P.](#) (pdf) affirms a district court's grant of injunctive relief under Section 10(j) of the Labor Relations Management Act. In its decision, the Fifth Circuit made a number of significant holdings, including the following:

(1) injunctive relief under Section 10(j) of the Labor Relations Management Act is not governed by the traditional four-part equitable test for injunctive relief that requires a showing of irreparable harm;

(2) the National Labor Relations Board ("NLRB") may delegate its authority to seek injunctive relief under Section 10(j) to its General Counsel;

(3) the NLRB's General Counsel does not lose any authority delegated to him or her when the NLRB does not have a quorum to do business if it had such a quorum at the time it delegated the particular authority at issue; and

(4) a district court in granting injunctive relief may not order a party to agree to a bargaining proposal.

Judge Wiener wrote the court's opinion.

- [Freeman v. Quicken Loans, Inc.](#) (pdf) holds that section 8(b) of the Real Estate Settlement Procedures Act does not prohibit a lender from charging borrowers loan discount fees or loan processing fees at the closing of a mortgage transaction so long as the lender does not split the fees with another party. Chief Judge Jones wrote the majority opinion. Judge Higginbotham dissented.
- [Keller Founds., Inc. v. Wausau Underwrites Ins. Co.](#) (pdf) holds that non-assignment clauses in insurance policies are enforceable under Texas law and coverage does not transfer to an alleged "successor" by operation of law where the policies are excluded from an asset transfer. Judge Owen wrote the court's opinion.

Thanks again to [Jason](#) and stay tuned for more [Nerdlaws](#) to come.

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