

- SUBJECT:** Requiring attorney-in-fact to be made a party in suit on a Lloyd's plan
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 6 ayes — Smithee, Martinez Fischer, Deshotel, Hancock, Isett, Thompson
0 nays
1 present not voting — Taylor
2 absent — Eiland, Hunter
- WITNESSES:** For — None

Against — (*Registered, but did not testify:* Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Thomas Ratliff, American Insurance Association; Jay Thompson, AFACT; Joe Woods, Property Casualty Insurers Association of America)
- BACKGROUND:** A Lloyd's plan is an insurance policy contracted between an attorney-in-fact (a corporate entity or a person) and at least 10 underwriters to provide property and casualty insurance. The attorney-in-fact acts as an agent for the Lloyd's plan and is neither a "member" of the plan nor a bearer of risk. As such, federal courts consistently have held that an attorney-in-fact cannot be held individually liable in a lawsuit on a Lloyd's plan.
- DIGEST:** HB 1928 would require that an attorney-in-fact for a Lloyd's insurance policy be made a party to any suit brought to enforce the contractual obligations of the policy.

HB 1928 would apply only to an insurance policy that was delivered, issued for delivery, or renewed on or after January 1, 2010.

The bill would take effect September 1, 2009.
- SUPPORTERS SAY:** HB 1928 would allow Texans to pursue claims on Lloyd's insurance contracts in state courts, rather than in federal courts, where legal costs are generally higher and traveling times are less convenient. In many cases

involving Lloyd's plans, the interested parties who sell policies to Texans reside outside of the state, and the attorney-in-fact required by Texas law to maintain an office within the state is frequently a "shell official" who performs little actual work relating to the Lloyd's plans. The inability to obtain state jurisdiction by making an attorney-in-fact a party to a suit prevents Texans from using their own state courts to seek legal redress.

Contrary to some objections, HB 1928 contains no provisions that would allow a third party to bring an action directly against a provider of insurance. Hence, the notion that the bill would somehow make Texas a "direct action" state simply is incorrect.

**OPPONENTS
SAY:**

HB 1928 would contradict well-established and consistent federal jurisprudence that holds that an attorney-in-fact may not be made a party to a suit on an insurance contract unless the attorney-in-fact exceeded its authority. Legal precedent states clearly that an attorney-in-fact is merely an agent for the real party in interest and does not possess interests sufficient to qualify for real party-in-interest status. By making an attorney-in-fact an automatic party to any suit brought to enforce the obligations of a Lloyd's insurance policy, HB 1928 could potentially create undefined liability for an attorney-in-fact.

Though it is understandable that some policymakers would like to extend state jurisdiction to suits against out-of-state providers of Lloyd's insurance plans, there is little evidence to suggest that parties who litigate Lloyd's plans in federal courts receive unfair outcomes or otherwise experience judicial prejudice. Federal jurisdiction through diversity of the parties is entirely appropriate when a Texas resident wishes to litigate against defendants who reside in other states.

HB 1928 also could surreptitiously change Texas into a "direct action" state, in which a third party may sue directly an insurance provider to collect any damages allegedly suffered by the third party due to the action or inaction of a person insured by the provider. Texas law instead requires the third party to bring the suit against the insured person who allegedly caused the damage. The insurance provider is not a party to suit, but must provide the insured with a defense as may be required by the policy between the provider and the insured. This bill effectively could alter a fundamental rule of Texas insurance law by forcing an attorney-in-fact for

a Lloyd's plan to be made a party to any suit brought to enforce the obligations of the plan.