



The Weekly Update of Texas Insurance News  
**TEXAS INSURANCE LAW NEWSBRIEF**



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**BODILY INJURY FROM DEFECTIVE IMPLANTS EXCLUDED BY PRODUCTS-COMPLETED OPERATIONS HAZARD**

The Fifth Circuit recently affirmed summary judgment in favor of a CGL insurer in a coverage dispute arising from a claim where the injured party sought recovery from the insured for bodily injury caused by defective cosmetic lip implants. In *American Institute of Intradermal Cosmetics, Inc. v. Maryland Casualty Co.*, No. 06-106684 (5<sup>th</sup> Cir. (Tex.) November 28, 2006), the insured argued that the injuries should be covered under an exception to the exclusion for classes of products or operations listed under a related coverage part. The court disagreed and found the policy was clear and unambiguous and further found that “[m]erely classifying Premier Products as a cosmetics company does not extend insurance coverage to all cosmetics-related injuries.”

**COURT FINDS FACT ISSUE CONCERNING DEFENSE ATTORNEY’S ABILITY TO CONSENT TO CLAIM ASSIGNMENT**

In *Mireles v. Zurich American Insurance Co.*, No. C.A. C-03-504 (S.D.Tex. December 3, 2006), Zurich sought dismissal of claims asserted by third party personal injury plaintiffs based on a clause in its policy prohibiting the assignment of claims against it without Zurich’s express consent. Plaintiffs, however, produced testimony from the attorney appointed to represent the insured that he had informed Zurich’s adjustor he was recommending the insured accept a settlement that included an assignment and Zurich did not object. The court concluded Zurich’s alleged acquiescence by silence after being informed arguably cloaked the attorney with some indicia of authority to consent on Zurich’s behalf. Summary judgment was denied.

**COURT FINDS LATE PAYMENTS PENALTY DOES NOT APPLY TO UIM CLAIM PAID 2 DAYS AFTER JUDGMENT**

In *Mid-Century Ins. Co. of Texas v. Daniel*, No. 07-05-0014 CV (Tex.App. – Amarillo November 28, 2006), Daniel sued a negligent driver and Daniel’s own UIM insurer for injuries sustained in an auto accident. Mid-Century moved to sever and abate and then paid the UIM benefits owed two days after the trial court awarded damages exceeding the negligent driver’s liability limits. The trial court then awarded late payment penalties and attorney fees under Texas Insurance Code Article 21.55. The Amarillo Court of Appeals agreed with Mid-Century’s argument that “a claim under article 21.55 does not arise until after a judgment has been rendered against the tortfeasor.” Here, Mid-Century issued payment within 2 days of the judgment and no 21.55 violation occurred.

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