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FORT WORTH COURT OF APPEAL REJECTS OVERBROAD DISCOVERY & GRANTS MANDAMUS FOR INSURER IN DECLARATORY JUDGMENT ACTION

The Ft. Worth Court of Appeals on Thursday issued a conditional writ of mandamus last Thursday after multiple Farmers Insurance entities challenged a trial court's order granting the insured's motion to compel written discovery. In *In re Texas Farmers Insurance Co. et al*, No. 02-13-00449-CV, — WL — (Tex. App.—Fort Worth Jan. 30, 2014), Farmers brought a mandamus proceeding arising out of a declaratory judgment action concerning the duty to defend and indemnify in a suit involving an all-terrain vehicle accident. The insured served discovery seeking, among other things, claims and training manuals and "all documents" relating to an applicable exclusion and to a broad set of prior insurance claims. Farmers objected and asserted various privileges, and the insured moved to compel.

After a hearing, the trial court ordered production of responsive material over all of Farmers' objections. The court did so even though the parties and the court agreed that the insured should withdraw one of the requests and serve a narrower one, and even though the court had reviewed neither a privilege log nor the documents themselves to determine if any of the asserted privileges applied. Farmers sought mandamus relief from the court of appeals, and the court of appeals stayed the order compelling discovery responses while the mandamus proceeding went forward.

Of the eleven-page appellate court opinion, the analysis of the issues took just two paragraphs. The court of appeals first criticized the trial court's compelling production over privilege objections before Farmers had even been required to prepare a privilege log, and without Farmers even submitting the contested documents for in camera inspection by the judge. Further, the trial court had erroneously ordered a response to the request for production that all parties had agreed would be narrowed, without acknowledging this agreement in its written order. Finally, the trial court compelled responses to requests seeking "'all' documents" that the court of appeals held were "facially overbroad as to breadth and scope." The court of appeals therefore sustained Farmers' mandamus issue and issued a conditional writ offering the trial court the opportunity to correct the identified errors.

SAN ANTONIO COURT OF APPEALS HOLDS "COMING-AND-GOING RULE" INAPPLICABLE TO TRIP FROM HOTEL TO JOB SITE IN WORKERS' COMP CASE

The "coming-and-going rule," which excludes travel between work and home from the course and scope of employment in a worker's compensation claim, did not apply to exclude a claim by the beneficiaries of a worker who resided away from his home in employer-provided lodging and drove an employer-provided vehicle, the San Antonio Court of Appeals held on Wednesday. In *Seabright Insurance Company v. Lopez*, No. 04-12-00863-CV, 2014 WL 300975 (Tex. App.—San Antonio Jan. 29, 2014), the decedent's wife sued after her husband was killed in a motor vehicle accident while driving between a hotel in a small town in the Waco area to a job site 40 miles away. The contested case hearing officer, the appeals panel, and the district court in a summary judgment order all sided with Mrs. Lopez, ruling that Mr. Lopez was killed while acting in the course and scope of his employment.

The coming-and-going rule generally excludes from workers' compensation coverage travel between work and home. However, an exception to the rule arises when the transportation is paid for by the employer, a fact that was undisputed in this case. Employer-provided transportation is not dispositive, however, and the court of appeals examined the summary judgment record for additional course-and-scope evidence.

Crucial to the court's resolution of the appeal was the fact that Mr. Lopez was not only driving a vehicle provided by his employer, but also was working away from home. The jobsite was located roughly 450 miles from Mr. Lopez's residence, and he was given a per diem that he used to stay at a hotel 40 miles from the jobsite. The court deemed the hotel to be "de facto employer-provided housing," and noted that Mr. Lopez would not have been in the vicinity of the accident but for his work. The evidence in the case was sufficient to establish as a matter of law that Mr. Lopez was acting in the course and scope of his employment, and therefore his wife was entitled to recover worker's compensation benefits because of his death.