



The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF



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A Service of Martin, Disiere, Jefferson & Wisdom L.L.P.

Principal Office 808 Travis, Suite 1800 Houston, Texas 77002 713.632.1700 FAX 713.222.0101
111 Congress Avenue, Suite 1070 Austin, Texas 78701 512.610.4400 FAX 512.610.4401
900 Jackson Street, Suite 710 Dallas, Texas 75202 214.420.5500 FAX 214.420.5501

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**INDIVIDUAL NAMED INSURED IS NOT ENTITLED TO RECOVER ON
PROPERTY HELD BY WHOLLY OWNED CORPORATE ENTITY**

The U.S. District Court for the Eastern District of Texas recently held that a named insured who owned and leased property under the name of a wholly owned corporate entity was not entitled to recover under a policy issued to her individually. In *Mao v. State Farm Lloyds, Inc.*, 2008 WL 2148081 (E.D. Tex., May 20, 2008) the insured purchased a homeowner's policy in her own name even though property was owned by a wholly owned corporate entity. That entity leased the property to another corporate entity which was also wholly owned by the named insured and when the dwelling was destroyed by fire, the named insured submitted a loss of rents claim. In granting summary judgment to State Farm Lloyds, the court concluded:

Because Mao, in her individual capacity, is the named insured on the Property and because the Property did not belong to Mao, the insurance claim is not covered under the policy. Accordingly, Mao's cause of action for breach of contract fails as a matter of law.

**NON-SUBSCRIBER'S ARBITRATION AGREEMENT BINDING ON SURVIVAL
ACTION BUT NOT WRONGFUL-DEATH CLAIM**

Recently, the Houston First Court of Appeals granted a petition for writ of mandamus seeking to compel arbitration of a non-subscriber's survival action, but denied mandamus relief as to arbitration of the wrongful-death claims. In *In re Jindal Saw Limited*, 2008 WL 2186086 (Tex. App. – Houston (1st Dist.), May 22, 2008), an employee died as the result of an on the job injury while working for a non-subscriber to the Texas Workers' Compensation system. The employer's employee benefit plan included an agreement to arbitrate any disputes and claims and referenced the employee's *heirs* and *beneficiaries* as parties to the plan.

Addressing the employer's effort to compel arbitration of the survival and wrongful death claims, the court observed that the spouse and children did not sign the agreement. And while the employee's survival action was personal to the insured and the arbitration agreement was binding on that claim, the wrongful-death claims asserted by the spouse and children were personal to them. Because the wife and children did not sign the agreement to arbitrate their personal claims, they were not bound by the arbitration agreement.

COURT ENFORCES HOMEOWNERS' POLICY ARBITRATION CLAUSE

The San Antonio Court of Appeals recently conditionally granted a writ of mandamus to compel arbitration of a homeowners' insurance dispute. In *In re Farmers and Ranchers Mutual Insurance Co.*, 2008 WL 2133116 (Tex. App. – San Antonio, May 21, 2008), a dispute arose over a claim made under the policy. The insurer answered the lawsuit then sought to compel arbitration as provided for by the policy. The court found that because: 1) the insurer met its evidentiary burden establishing the existence of the arbitration clause, 2) the policy was mailed and not returned, and 3) the insured did not establish a defense to enforcement, the arbitration provision was valid and the trial court was obligated to enforce it.

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom L.L.P.
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