



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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TEXAS SUPREME COURT REJECTS EFFORT TO SUBVERT WORKERS COMPENSATION SUBROGATION RIGHTS

Last Friday, the Texas Supreme Court rejected an effort by plaintiffs' to structure the terms of a wrongful death settlement with responsible third parties so as to deny the worker's compensation carrier "first money" subrogation recovery. In *Texas Mutual Ins. Co. v. Ledbetter*, No. 06-0814 (Tex. April 4, 2008), the employee was electrocuted in an on the job accident and his worker's compensation carrier paid funeral expenses and began paying monthly death benefits to his widow and minor son. They in turn sued responsible third parties and ultimately reached a \$4.5 million settlement agreement.

The worker's compensation carrier intervened to assert its subrogation rights. The plaintiff's attorney then non-suited all claims except those made on behalf of the Estate. The settlement was allocated to Ledbetter's Estate (for pain and suffering before his death) and the remainder to plaintiffs' counsel and the ad litem for attorney fees. Nothing was to be paid to the widow and the children. The court also struck the worker's compensation carrier's petition in intervention but kept it in the case as a party and ordered it to pay future benefits to the widow and minor son.

On review, the Texas Supreme Court observed that "the law governing this dispute was simple: the compensation carrier gets the first money a worker receives from a tortfeasor" and that this reimbursement right "is crucial to the workers compensation system" in order to control costs and prevent double recovery. "A carrier's subrogation rights should hardly ever be contested...." The Court also noted:

When an injured worker settles a case without reimbursing a compensation carrier, everyone involved is liable to the carrier for conversion – the plaintiffs, the plaintiffs' attorney, and the defendants. As between those parties, we have held that generally those who received the funds unlawfully (the plaintiffs and their attorney) should disgorge them rather than making the tortfeasors pay twice.

Accordingly, the Texas Supreme Court affirmed the appellate court's reinstatement of the carrier's petition in intervention for reimbursement and reversed and remanded the judgments from the trial court that approved distribution of the settlement funds without deducting amounts necessary to reimburse the carrier for payment of past and future benefits.

TEXAS SUPREME COURT FINDS COLLISION WITH DISLODGED AXLE- WHEEL ASSEMBLY FAILS TO TRIGGER UM/UIM BENEFITS

The Texas Supreme Court recently reversed a court of appeals decision and found that the “actual physical contact” with an unknown “motor vehicle” requirement of Texas’ uninsured/underinsured motorist statute is not satisfied by physical contact with a detached axle and tandem wheels which separated from an eighteen wheeler passing in the opposite direction. In *Nationwide Insurance Co. v. Elchehimi*, 2008 WL 821039 (Tex. March 28, 2008), the court focused on both the common usage and other statutory definitions of the term “motor vehicle” in reaching its decision and concluded that “a single axle attached to two wheels” would not qualify as a “motor vehicle.”

Editors Note: Our law firm had the privilege of representing Farmers Insurance as amicus counsel before the Texas Supreme Court in this case and we take this opportunity to both thank and congratulate Farmers and Nationwide on this significant victory for Texas auto insurers.

FIFTH CIRCUIT FINDS ADMISSION OF EVIDENCE OF GRAND JURY’S REFUSAL TO INDICT INSURED FOR ARSON IS REVERSIBLE ERROR

The Fifth Circuit recently concluded the district court’s admission of evidence that a grand jury refused to indict an insured for arson was reversible error and granted the insurer’s motion for new trial. In *Munoz v. State Farm Lloyds*, 2008 WL 836396 (5th Cir. March 28, 2008), State Farm presented evidence proving the insured failed a polygraph exam, and timely objected to evidence presented by the insured stating that a grand jury “no-billed” him and refused to indict. The Fifth Circuit rejected the insured’s argument that State Farm “opened the door” by introducing evidence of the insured’s failure of the polygraph exam and held the applicable rules of evidence precluded admission of evidence regarding the grand jury’s actions.

Editors Note: Our law firm had the privilege of representing State Farm in the appeal of this case to the Fifth Circuit and we take this opportunity to both thank and congratulate State Farm and its trial counsel (Warren Taylor of Taylor & Taylor in Houston) on this significant victory.

MDJ&W UNDERWRITES UNIVERSITY OF HOUSTON LAW FOUNDATION’S ADVANCED INSURANCE AND TORT CLAIMS SEMINAR

Martin, Disiere, Jefferson & Wisdom is sponsoring this years Advanced Insurance & Tort Claims seminar to be held live in Dallas this Thursday and Friday, April 10-11 and in Houston on April 17-18. It will also be held by video in Austin on May 29-30, 2008. The two day seminar provides 12 hours CE credit, including 2 hours consumer protection, for adjusters.

The University of Houston is offering insurance professionals attending as our guests a significant discount off of the registration fee. **It’s not too late to sign up** and join many other insurance professionals at this outstanding seminar. To make arrangements to attend as our guest, e-mail us at uhlawsseminar@mdjwlaw.com with your contact information and let us know the city where you would like to attend. We will then get back with you with more information. For more information, the course brochure may be viewed at www.mdjwlaw.com/docs/advins08.pdf. We hope to see you there!

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