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TEXAS SUPREME COURT DETERMINES THAT A WORKER'S EMPLOYMENT STATUS IS ISSUE OF COMPENSABILITY GOVERNED BY LABOR CODE

In a case of first of impression, *Morales v. Liberty Mut. Ins. Co.*, --- S.W.3d ----, 2007 WL 4276549 (Tex., Dec. 7, 2007), the Texas Supreme Court construed the term "compensability" as used in Labor Code section 410.301(a) to include the issue of a worker's employment status. The appeal reached the high court from a dispute concerning which district court had jurisdiction over the underlying appeal of an administrative decision. Following a workers' compensation appeal panel decision that held her deceased husband was an independent contractor rather than employee, Morales sought judicial review in an El Paso district court. Morales based her jurisdictional choice on the Labor Code's jurisdictional provisional for appeal in the county in which the claimant was living at the time of the incident if the issue involves compensability or eligibility. Liberty Mutual challenged the El Paso court's jurisdiction to hear the controversy, arguing that the appeal had to be heard by a Travis County district court in Austin. Liberty Mutual contended that employment status involved an issue of coverage that did not fall within the issue of compensability and that the Labor Code provides for exclusive jurisdiction in Travis County if the issue involves anything *other than* compensability or eligibility. Plaintiff argued her claim did involve compensability. The Supreme Court resolved the issue by determining that coverage and compensability were not mutually exclusive, treating a worker's employment status as an element of compensability. As such, the Plaintiff was allowed to bring suit in El Paso rather than Austin.

FIFTH CIRCUIT PANEL REFUSES TO ALLOW CERTIFICATE OF INSURANCE TO EXPAND TERMS OF INSURANCE POLICY

In *Lexington Ins. Co. v. Autobuses Lucano, Inc.*, 2007 WL 4232984 (5th Cir. 2007), Autobuses appealed a summary judgment granted to Lexington that found Autobuses was not an insured under the policy. The Court reviewed Lexington's evidence under the eight-corners rule and refused to consider any extrinsic evidence including a certificate of insurance. Lexington's summary judgment evidence included the underlying petition and the policy, including the endorsements for additional insureds.

RUN-OFF CLAIMS AND EXPENSES NEED NOT BE REASONABLE, MERELY INCURRED, UNDER TERMS OF AGENCY AGREEMENT AND REINSURANCE TREATY

In *Gamma Group, Inc vs. Transatlantic Reinsurance Company*, --- S.W.3d ----, 2007 WL 4227081, Tex.App.-Dallas, December 03, 2007, the reinsurer, Transatlantic Re, and a "fronting" carrier, Home State County Mutual, sued the agent, Gamma Group, who was responsible for binding and adjusting the policies. On appeal, Gamma argued the trial court erred in awarding damages under the contract because losses and loss adjustment expenses on the auto insurance run-off claims should not have been included in the commission adjustment after Home State transferred the claims adjusting responsibility to a third party. Gamma also argued the trial court erred in awarding statutory attorney's fees for breach of contract because the demand was allegedly unreasonable and the evidence was allegedly insufficient to establish the statutory prerequisites for recovery. In contrast, Transatlantic Re and Home State claimed the contract provided for commission adjustments based on "incurred" rather than "reasonable" losses. As such, Transatlantic Re and Home State argued the trial court erred when it construed the contract to imply that only "reasonable" run-off payments were to be included in the commission adjustment calculation. Last week, the Dallas Court of Appeals determined that run-off payments under the agency agreement need not be reasonable in order to be submitted for reimbursement under the reinsurance treaty.

Transatlantic Re terminated its treaty but Gamma remained obligated to handle run-off claims on the policies. Transatlantic Re and Home State then exercised their contractual right to terminate Gamma's servicing of the run-off claims and transferred those claims to a third-party. Transatlantic Re and Home State sought to have the excess commissions previously paid to Gamma refunded. Gamma argued the run-off claim and related expenses could only be run through the treaties if they were "reasonable." Because Gamma argued the run off expenses were unreasonable, it argued it was not responsible for reimbursement of certain commissions. Relying on basic contract construction rules and because it found sophisticated parties had entered into the agreements, the Dallas Court of Appeals determined the contract did not require the run-off claims to be "reasonable" and refused to imply the term into the contract. It thus remanded the case to the trial court to have the damages to the insurers properly determined.