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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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HOUSTON COURT HOLDS COMMERCIAL POLICY'S "YOU" DEFINED AS CORPORATE NAMED INSURED IS CLEAR AND UNAMBIGUOUS AND DOES NOT INCLUDE EMPLOYEES

In what can only be described as a tortured and logically graceless opinion, Houston's Fourteenth Court of Appeals reversed a summary judgment in favor of Liberty Mutual and rendered judgment in favor of its insured, Lone Star Steel, for breach of contract and Article 21.55 damages against Liberty Mutual. In *Lone Star Heat Treating Co. v. Liberty Mut. Fire. Ins. Co.*, 2007 WL 2386345 (Tex. App.—Houston [14th Dist.] August 23, 2007), Lone Star sued Liberty Mutual after Liberty Mutual denied a claim two lost loads of customers' materials based on the policy's "dishonesty exclusion." Lone Star lost the loads when a man identifying himself as "Robert Smith" showed up at Lone Star's loading dock after hours, without prior authorization, without the proper documentation, and claimed he was there to pick up the loads. Despite the circumstances, Lone Star's employee released the loads, and neither the loads nor Robert Smith have been seen since. For Liberty Mutual's policy's dishonesty exclusion to apply, "you" must have entrusted the property to Robert Smith. Lone Star argued that "you" was unambiguous and as a defined term could only mean Lone Star, and if "you" was ambiguous it had to be construed in Lone Star's favor. Liberty Mutual argued that "you" was unambiguous but, as applied to a corporation, it necessarily included the corporation's employees. The Houston Court held that the policy's definition of "you" as "Lone Star Heat Treating" was clear and unambiguous, and refused to find that "you" included a corporation's employees. But the Court responded to Liberty Mutual's argument that a corporation can act only through its employees by holding that an employee can still be "you" if the employee's acts can be imputed to Lone Star because the employee is acting within his actual authority. The Court rendered judgment against Liberty Mutual for $78,723.85, and remanded the case to the trial court for determination of the statutory penalties and reasonable attorneys fees under former Texas Insurance Code Article 21.55.

FIFTH CIRCUIT RULES THAT DISABILITY PLAN ADMINISTRATORS MAY RELY ON THE DEPARTMENT OF LABOR'S DICTIONARY OF OCCUPATION TITLES IN DEFINING PLAN TERMS TO ESTABLISH THE MINIMUM BASELINE OF ABILITIES NECESSARY TO PERFORM A JOB

In *Pylant v. Hartford Life & Acc. Inc. Co.*, 2007 WL 2353165 (5th Cir. August 20, 2007), Pylant challenged Hartford's termination of her long-term disability benefits under ERISA. Specifically, Pylant argued that Hartford incorrectly defined the plan term "your occupation" by reference to the Department of Labor's Dictionary of Occupation Titles instead of looking at the duties she actually

performed as a technical writer. The Fifth Circuit determined that the reference was appropriate because administrators "cannot be expected to anticipate every assignment an employer might place upon an employee outside the usual requirements of his or her occupation," agreeing with the Eleventh Circuit's treatment of the issue. The Fifth Circuit went on to rule that "substantial evidence" upheld Hartford's decision to discontinue benefits.

THE DALLAS COURT OF APPEALS AND THE DIVISION OF WORKERS COMPENSATION DISAGREE AS TO THE EXTENT OF THE DIVISION'S EXCLUSIVE JURISDICTION

In a pair of decisions, the Dallas Court of Appeals determined that the Division of Workers Compensation has exclusive jurisdiction to hear disputes regarding the amount to be paid between insurers and medical service providers. Relying on Texas Labor Code section 413.031(a)(1), the Dallas Court of Appeals held that the Legislature vested exclusive jurisdiction in the Division to decide such disputes. The decisions directly contradict the Division's dismissal of one of the suits for lack of jurisdiction. In the first decision, *Healthsouth Medical Center v. Employers Ins. Co. of Wausau*, 2007 WL 2380253 (Tex. App.—Dallas August 22, 2007), Healthsouth had requested a medical dispute resolution from the Division. The Division dismissed Healthsouth's request, stating "The Commission's Medical Review Division does not have jurisdiction in medical disputes involving contract disputes between a healthcare provider and insurance company." Following the Division's dismissal, Healthsouth abandoned the Division and pursued a breach of contract claim in state court. The Dallas court specifically stated that Healthsouth could not merely abandon the administrative proceeding, and instructed that the Division's ruling should have been challenged through the appropriate forum. In the second decision, *Centre for Neuro Skills, Inc. v. Association Cas. Ins. Co.*, 2007 WL 2380168 (Tex. App.—Dallas August 22, 2007), Centre had not asked the Division for a ruling, merely filing suit in county court to recover against the insurer. The Dallas court was not persuaded by Centre's argument that independent contractual claims between health care providers and insurance carriers that are not derivative of a patient's workers' compensation claim do not fall within the Division's jurisdiction.