



May 14, 2007

STAFF LEASING COMPANY'S WORKERS COMP COVERAGE PROTECTS CLIENT COMPANY

Last Monday, the Dallas Court of Appeals noted the distinction between staff leasing companies and temporary employment agencies and concluded that while a temporary agency's workers compensation coverage would not protect a client company, a staff leasing agency's coverage would. In *Vega v. Silva*, 2007 WL 1310956 (Tex.App.- Dallas, May 7, 2007), Silva and Vega were employed by the same staff leasing company. Silva was driving a van owned and maintained by the client company to a client jobsite when an accident occurred and Vega was injured. Vega sued Silva and the client company under a theory of *respondeat superior*. Silva and the client company filed motions for summary judgment asserting they were entitled to the protection afforded by the staff leasing company's workers compensation coverage and the Texas Workers Compensation Act's exclusive remedy provision. The trial court agreed, granted summary judgment, and this appeal followed.

On appeal, Vega relied on the Texas Supreme Court decision in *Garza v. Exel Logistics, Inc.*, 161 S.W.3d 473 (Tex. 2005) and to argue that a temporary employment agency's workers compensation coverage did not extend to the client company. Silva and the client company argued, however, that Silva and Vega were employed by a staff leasing company subject to the Staff Leasing Services Act (SLSA) and, under the SLSA, they are covered by the same policy issued to the staff leasing agency. The court agreed and, noting the distinction between a staff leasing company and a temporary employment agency, concluded the staff leasing company's workers compensation coverage and its exclusive remedy provision protected both Silva and the client company. Summary judgment was affirmed.

TAKE NOTHING JUDGMENT ON ARSON DEFENSE UPHELD

Last Thursday, the Houston First Court of Appeals upheld a trial court's judgment finding an insurer had properly denied coverage to a nightclub owner under an arson defense and fraud exclusion. In *Routis v. Clarendon Insurance Company, Inc.*, No. 01-06-00459-CV (Tex.App.-Houston [1st Dist] May10, 2007), the insurer's investigation determined that a fire which destroyed the insured nightclub was intentionally set and the insured had both motive and opportunity. The insured had successfully presented a claim in 1992 for a fire loss to another nightclub destroyed under similar circumstances. In this loss, there was a dispute involving a tenant, a lease and provisions in the lease providing the insured greater discretion in cancelling the lease if the property was more than 50% destroyed by fire. The tenant and insured disagreed over the percentage of damage following the first fire when, one month later, a second fire occurred. Both then agreed the damage exceeded 50%. The parties agreed to a bench trial before Judge Tony Lindsay in Houston who found in favor of the insurer. This appeal followed.

On appeal, the court noted that in "an appeal from a bench trial, we do not invade the fact-finding role of the trial court, which alone determines the credibility of the witnesses, the weight to give to their testimony, and whether to accept or reject all or part of that testimony." Reviewing the elements of the affirmative defense

based on arson, and the case law supporting motive, opportunity and incendiary origin findings by other courts, the Houston First Court of Appeals affirmed the judgment of the trial court.

DRI'S NATIONAL BAD FAITH SEMINAR

Next month, the Defense Research Institute will host national Bad Faith Litigation Seminar in Washington D.C. If you want learn about the latest national trends in bad faith litigation, please consider registering for this two day bad faith seminar that the DRI Insurance Law Committee will present at the Renaissance Washington in Washington D.C. on June 21st and 22nd. The seminar, which will be co-chaired by Hartford's Patrick Greiten and Tressler Soderstrom's Paul White, will consider emerging trends in extra-contractual liability claims and work through effective strategies for anticipating, avoiding and defending against bad faith from discovery strategies to closing arguments. Chris Martin of our firm will be directing the bad faith trial program on the second day of the seminar and he will also be speaking on Winning the Bad Faith Trial Through Jury Selection. The program is approved for 10.25 CLE hours. The Program Brochure is linked [here](#).

For more information or to register for the seminar, call the DRI at (312) 795-1101 or go to <http://www.dri.org/DRI/open/CLE.aspx?sem=20070045>

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