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The Weekly Update of Texas Insurance News

## TEXAS INSURANCE LAW NEWSBRIEF



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### **DECISION ALLOWING APPRAISAL ON “EXTENT” OF HAIL DAMAGE UNCHANGED ON REHEARING**

On Friday, the Dallas Court of Appeals denied State Farm Lloyds’ motion for rehearing on a controversial decision which allowed the appraisal process to address the “extent” of hail damage to the insured’s roof because it allegedly falls within the appraisal provision used to resolve disputes as to the “amount of loss.” In *Johnson v. State Farm Lloyds*, 2006 WL 3042104 (Tex.App.-Dallas October 27, 2006), the court denied State Farm’s motion for a rehearing and substituted a new opinion for the one released July 25, 2006 (*See Texas Insurance Law Newsbrief*, July 31, 2006), but its holding remained the same; the appraisal process *could* be used to resolve a coverage dispute over the *extent of damage* caused by hail. We will continue to monitor this case on appeal. [Note: Any carrier interested in filing an amicus brief before the Texas Supreme Court on this controversial issue can contact any of our lawyers for additional information.]

### **COURT DENIES SEVERANCE & ABATEMENT OF BAD FAITH CLAIMS IN ASTROS’ DISABILITY INSURANCE LAWSUIT OVER JEFF BAGWELL**

Last Tuesday, a Federal District Court for the Southern District of Texas denied the insurer’s motion to sever and abate the claims of the Houston Astros seeking damages for bad faith and Texas Insurance Code violations. In *Houston McLane Company, Inc. D/B/A Houston Astros Baseball Club v. Connecticut General Life Insurance Company*, Cause No. H-06-1508 (S.D.Tex. October 24, 2006), the insurer denied the Astros’ claim for disability benefits arising from Jeff Bagwell’s inability to return to the active roster following the 2005 season. The Astros sued the insurer and included extra-contractual allegations. The court denied the insurer’s motion to sever and abate the extra-contractual claims and rejected the insurer’s reasons based on judicial efficiency and potential prejudice, due in part to the fact that no settlement offers had been made during the claim process.

### **COURT FINDS CHILDREN’S MENTAL ANGUISH CLAIMS SUBJECT TO PER OCCURRENCE, NOT PER PASSENGER, POLICY LIMIT**

The Corpus Christi Court of Appeals recently interpreted coverage under an aircraft liability policy and held that policy limits of \$1,000,000 per occurrence and not \$100,000 per passenger applied to the mental anguish claims presented by the passenger’s children. In *Global Aerospace v. Pinson*, 2006 WL 2974160 (Tex.App.-Corpus Christi October 19, 2006), the policy limited coverage to \$100,000 per passenger and \$1,000,000 per occurrence. The policy, however, extended coverage for “bodily injury,” defined to include “mental anguish” sustained by “any person” arising from an “occurrence.” Because the children, although not occupying the aircraft, qualified for recovery as “any persons” and claimed mental anguish damages as a result of their

mother's death, the court held that their recovery under the policy would not be limited by the lower per passenger limit and that the \$1,000,000 policy limit applied to their claims.

## **FIFTH CIRCUIT AFFIRMS DECISION FINDING CGL AUTO EXCLUSION PRECLUDES COVERAGE FOR INJURIES TO CHILD LEFT UNATTENDED IN DAY CARE VAN**

Last Tuesday, the Fifth Circuit Court of Appeals affirmed a decision finding that the "auto use" exclusion typically found in CGL policies precluded coverage for bodily injuries sustained by a child negligently left in a van by a day care provider (See *Texas Insurance Law Newsbrief* May 2, 2005). In *Lincoln General Insurance Company v. Aisha's Learning Center*, 2006 WL 3012863 (5<sup>th</sup> Cir (Tex.) October 24, 2006), the court followed Texas' three-part test to determine whether liability "arises from use" of a motor vehicle for liability purposes and determined that, under the facts presented, coverage under the CGL policy was precluded.

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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