



www.mdjwlaw.com

The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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
106 East Sixth Street, Suite 900 Austin, Texas 78701 512.322.5757 FAX 512.322.5707
900 Jackson Street, Suite 710 Dallas, Texas 75202 214.420.5500 FAX 214.420.5501

August 21, 2006

TWO COURTS PROVIDE CONSISTENT, BROAD INTERPRETATIONS AS TO THE SCOPE OF RELEASE

The Fifth Circuit, in *CIC Property Owners v. Marsh USA, Inc.*, 2006 WL 2329499 (Aug. 11, 2006), and the Dallas Court of Appeals, in *Coats v. Ruiz*, 2006 WL 2337737 (Aug. 14, 2006), issued consistent opinions providing broad interpretations as to the scope of a release. The *CIC* Court relied upon verbiage that the releasor released claims “without limitation,” “unconditionally released,” and “covenanted ... not to sue [the released party] with respect to each and every right, claim, complaint, demand, ... [etc.] which CIC now has, has had, or might have relating to or arising out of any act, transaction, or occurrence between the parties ... whether known or unknown at this time.” The Fifth Circuit summarily determined that “the release on its face and in its substance reaches this suit [a post-settlement suit complaining of pre-settlement conduct which was not previously known by the releasor] by CIC.” The *CIC* Court noted that CIC argued that the release should be ineffective because Marsh USA allegedly breached a fiduciary obligation to CIC by securing a release so disadvantageous to CIC. In reaching its conclusion that the release was, in fact, enforceable, the Fifth Circuit noted that, even if assuming *arguendo* that a fiduciary relationship did exist between Marsh USA and CIC, the circumstances surrounding the negotiation and execution of the release fatally undermined CIC’s claim. The Court relied upon evidence that CIC was represented by its own counsel in a clearly adversarial negotiation; CIC and Marsh USA had terminated their business relationship prior to entering the disputed release; and CIC had hired counsel to review the release. Notably, the release itself recited that the parties “had an opportunity to consult with their respective attorneys concerning ... th[e] agreement;” the parties “voluntarily executed the [agreement] after advice of counsel;” and the release was “reviewed by counsel for the parties and approved as to form and content.” The Court stated that it “decline[d], absent supporting Texas authority, to attach a presumption of unfairness to a settlement of a formal adversarial proceeding, entered into by two sophisticated parties separately advised by counsel.”

In the Dallas case of *Coats*, Angela Coats and Elizabeth Hammonds were involved in an automobile accident in a car owned by Elizabeth’s parents. Angela died, and Elizabeth was injured. Both Angela and Elizabeth were insured by State Farm under their respective parents’ personal auto policies. Angela’s parents subsequently sued Elizabeth, and thereafter settled their claims. After settling their claims against Elizabeth and as funded by State Farm, the Coats then sued State Farm and three of its claims adjusters for breach of contract, fraud, misrepresentation, and Insurance Code violations for allegedly altering its investigation and findings in order to allegedly favor one insured over the other, and purportedly found that Angela, with the lower policy limits, was the alleged driver while Elizabeth, with the higher policy limits, was the alleged passenger. The Court affirmed summary judgment on the Coats’ breach of contract claims in favor of State Farm. The Court interpreted the release between the Coats and Elizabeth which included verbiage that released “any and all claims, demands, ... actions, causes, liabilities, ... and damages of whatsoever nature or character.” The Court also found that the release applied to State Farm, and was not limited to State Farm’s capacity as the Hammonds’ insurer. Notably, the release unequivocally and unambiguously released State Farm and its employees without limiting the scope of the release to State Farm’s relationship as the Hammonds’ insurer. Accordingly, the release between the

Coats' and Hammonds was broad enough to include the Coats' breach of contract claims against State Farm for the alleged breach of the Coats/State Farm insurance policy.

COURT ENFORCES HOMEOWNERS' AGREEMENT TO LIMIT PAYMENT TO AMOUNTS RECOVERED FROM INSURER

The Corpus Christi Court of Appeals, in *Gonzales v. State Farm Lloyds*, 2006 WL 2327259 (Aug. 10, 2006), affirmed summary judgment in favor of State Farm Lloyds and enforced several homeowners' agreements to limit payment to contractors for home repairs to those sums received from the insurer. In *Gonzales*, several homeowners retained Gulf Coast Construction Co. in connection with potential plumbing claims. State Farm paid each homeowner the reasonable value of each claim prior to the homeowners suing State Farm. Subsequently, at the depositions of each homeowner and their contractor, State Farm learned that the policy holders' agreements with GCC only required them to pay as much as they received from State Farm. Such development was significant because the State Farm policy provided that State Farm was not obligated to pay more than the smallest of its policy limits, the cost of repair, or the actual cost of repair. Based upon such deposition testimony, State Farm sought and obtained summary judgment on grounds which included the following arguments: nothing was owed when suit was filed because of the homeowners' agreements with GCC, the contracts with GCC were illegal, recovery was precluded by GCC's efforts to circumvent the "no assignment" clause of the insurance policies, and the appraisal award showed no additional contract benefits were owed to the homeowners. On appeal, the Court summarily disposed of the homeowners' arguments, stating that the homeowners had failed to negate all grounds for summary judgment relief. Further, the Court observed that the homeowners' briefing failed to include a clear and concise argument for the contentions made and failed to include citations to appropriate authorities in support of their argument.

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.
If you would prefer to receive this *Newsbrief* by fax rather than e-mail, or wish to unsubscribe, please reply to this e-mail with your request
For past copies of the *Newsbrief* go to www.mdjwlaw.com and click on our Texas Insurance News page.