The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF
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INJURED PASSENGER ENTITLED TO BOTH UM/UIM AND LIABILITY BENEFITS UNDER SAME POLICY

Last Tuesday, the Houston Fourteenth Court of Appeals held that an injured passenger was entitled to recover under both the driver's liability and uninsured/undersinsured motorist ("UM") coverages afforded by the driver's automobile policy. In *Jankowiak v. Allstate Property & Casualty Insurance Co.*, 2006 WL 2253093 (Tex.App.-Houston August 8, 2006), Jankowiak was a passenger in a car driven by Allstate's insured when the vehicle collided with an uninsured motorist. Both drivers were at fault and Jankowiak settled with her own insurer for her $20,000 UM policy limit and settled with Allstate for the driver's $25,000 liability limit. She then sought an additional $25,000 UM policy limit under the driver's same Allstate policy. The parties stipulated that Jankowiak's claimed damages exceeded the combined liability and UM limits to enable the court to rule as a matter of law on Jankowiak's ability to recover under both the liability and UM coverages of the same Allstate policy. The trial court ruled that she could not and Jankowiak appealed.

The court examined the legislative history of UM coverage along with the types of coverages afforded and observed that the Texas Legislature has not indicated that bodily injury liability and UM bodily injury coverages cannot both be recovered when neither is sufficient alone to cover the actual damages, therefore, the issue would have to be determined based on rules of contract interpretation. The court rejected Allstate's argument that the "maximum limit of liability" language was controlling across coverages and, focusing on the offset provision, the court noted that while the policy allowed payments under the UM coverage to be used to reduce amounts owed under the liability coverage, payment under the liability coverage did not allow the insurer to reduce amounts to which the insured may be entitled under the UM coverage. Holding that the "maximum limit of liability" provisions under various sections of the policy only applied to their respective sections, and holding that no provision allowed an offset to be taken under the UM coverage for amounts paid under the liability coverage, the court found that Jankowiak was entitled to both. The court went on to support its decision with an independent assertion of public policy reasons. Note: We will continue to monitor this case for further developments.

COURT REJECTS INSURER'S DTPA AND INSURANCE CODE CLAIMS ASSERTED BY WAY OF SUBROGATION AND ASSIGNMENT

Last Tuesday, the U.S. District Court for the Northern District of Texas narrowly construed "employment-related" liability exclusions so as to find a duty to defend and indemnify under commercial general liability ("CGL") policies but rejected the settling employment liability insurer's DTPA and Insurance Code claims asserted by way of assignment and subrogation. In *Great American Insurance Co. v. Federal Ins. Co.*, 2006 WL 2263312 (N.D.Tex. August 8, 2006), the CGL insurers denied coverage for claims asserted by a former employee who was arrested after former coworkers misconstrued his comments about guns he owned and his intentions on using them causing local police to investigate and detain him for a murder. After finding that the two CGL insurers owed defense and indemnity costs in a subsequent civil suit, the court rejected the one

insurer's DTPA and Insurance Code claims against the other because the claims "are personal and punitive in nature" and neither statute provides for assignment. For these reasons, the court granted summary judgment in favor of the CGL insurers on the DTPA and Insurance Code claims.

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