

# TEXAS INSURANCE LAW NEWSBRIEF

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## FIRST COURT OF APPEALS GRANTS MANDAMUS RELIEF AFTER AN INSURER'S MOTION FOR SEVERANCE IS IMPROPERLY DENIED – IN RE ESSEX INSURANCE CO., 2016 WL 6599613 (TEX. APP.—HOUSTON [1ST DIST.] 2016, NO PET H.)

Last week, the First Court of Appeals in Houston conditionally granted mandamus in favor of an insurer after a trial court improperly denied its motion for severance from a personal injury case brought against its insured. In *In re Essex Insurance Co.*, 2016 WL 6599613 (Tex. App.—Houston [1st Dist.] 2016), Israel Lopez sued Essex's insured Murphy Industrial alleging pressurized paint gun malfunctioned and shot epoxy into his finger. Plaintiff's finger had to be amputated as a result of the incident. The insurer denied coverage based on a policy endorsement excluding coverage for injuries to independent contractors. After the denial, the insured joined its insurer as a third party defendant to Plaintiff's case, seeking coverage and extra-contractual damages. In response, the insurer filed a motion for severance from the personal injury action. The trial court denied the motion to sever unexpectedly, reasoning that it could avoid any potential prejudice to the insurer by having a bifurcated trial. Under the court's plan, Plaintiff's personal injury claims against the insured would be tried first, and the same jury would then hear the insured's coverage and extra-contractual claims against the insurer. The insurer promptly challenged the trial court's denial of its motion to sever by seeking mandamus relief.

The First Court of Appeals conditionally granted mandamus after a straightforward application of established Texas law preventing suits for insurance coverage to be joined in the same suit as the underlying third-party liability claim. The Court first noted that Texas Rule of Civil Procedure 38 provides that a liability insurer may not be joined as a third-party defendant in a tort case "unless such company is by statute or contract liable to the person injured or damaged." Similarly, Texas Rule of Civil Procedure 51 prevents the joinder of claims against a liability insurance company in tort cases unless that company is directly liable to the injured person. The Court then asserted that "both longstanding rules reflect the settled law in Texas" that an insurer cannot be joined to a personal injury lawsuit until the tortfeasor's liability has been established. Accordingly, the Court concluded that Rule 38 and Rule 51 should have prohibited the insured from joining its insurer as a third-party defendant in Plaintiff's personal injury case. Last, the Court reasoned that the insurer would lack an adequate remedy on appeal if forced to participate in discovery and monitor the liability case despite the possibility that the insured would not prevail on its coverage claims. Moreover, the Court noted that the insurer could be prejudiced by having the same jury hear both the liability and insurance coverage issues. In order to avoid prejudice to the insurer and ensure a rigid application of Texas law, the First Court of Appeals conditionally granted mandamus and ordered the trial court to vacate its order denying the insurer's motion for severance.