2015 YEAR IN REVIEW

AUTOMOBILE / TRUCKING LITIGATION UPDATE

By Gerald B. Lotzer

1. *Galveston County Health District v. Erica Hanley* (Tex. Civ. App. – 5th Dist., Dec. 4, 2014).

This lawsuit arises out of an automobile accident that occurred when the vehicle that Erica Hanley was driving collided with a District's 2 ambulance. This is an interlocutory appeal from the trial court's denial of Galveston County Hospital District's plea to the jurisdiction. The Court of Appeals overruled both of the District's issues and affirmed the order of the trial court.

A Galveston County Health District ambulance was responding to a call and entered an intersection against a red light. Prior to entering the intersection, the ambulance driver's line of sight was obstructed by cars, a building and bushes. He could not see if there was oncoming traffic. The driver of the ambulance said that he slowed from 30 miles per hour to less than 10 miles per hour when he entered the intersection and once he spotted Hanley's vehicle, he swerved to avoid it but her car hit the ambulance's right rear wheel well. Hanley brought suit contending that the ambulance was not in the process of responding to an emergency and that the ambulance driver was negligent or, in the alternative, acting with conscious indifference or reckless disregard for her safety and the safety of others.

The District filed a plea to the jurisdiction attaching evidence showing that the ambulance was responding to an emergency call, used its emergency lights and siren, was not speeding through the intersection, but proceeded through slowly with regards to the other motorists. Ms. Hanley acknowledged that the emergency lights were on but she did not "believe" that the siren was on and she did not hear it or recall hearing it. She further testified to her "belief" that the ambulance did not stop or slow before entering the intersection.

The District argued that it was entitled to governmental immunity both under the Emergency Exception of the Texas Tort Claims Act and by virtue of an ambulance driver's official immunity. See, §51.014(a)(8) Tex. Civ. Prac. & Rem. Code; *State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007).

The Court stated that a plaintiff must allege facts that affirmatively establish the trial court's subject matter jurisdiction. In determining whether the plaintiff has satisfied this burden they construe the pleadings liberally in the Plaintiff's favor and deny the plea if facts affirmatively demonstrating jurisdiction have been alleged. See, *Holland* at 643; *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227.

When the relevant issue is disputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea to the jurisdiction as a matter of law. *Id.* at 228. However, if the evidence creates a fact question regarding jurisdiction, then the trial court must deny the plea, and the fact issue will be resolved by the fact finder. *Id.* at 227-228.

The doctrine of governmental immunity, like sovereign immunity from which it derived, protects political subdivisions of the State from lawsuits unless the Legislature specifically waives this immunity. The Tort Claims Act, which provides limited waiver of immunity, applies equally to the State and its political subdivisions. The Act also provides for exceptions to the waiver of immunity. For example, the "emergency exception" provides that immunity is not waived when the employee's act was in response to an emergency call and in compliance with the law or – in the absence of applicable law – not done with "conscious indifference or reckless disregard for the safety of others". The "emergency exception" requires proof that the employee's act was in response to an emergency call and in compliance with relevant law. The Health District provided several affidavits, including an affidavit from the passenger in the ambulance at the time of the accident, that the ambulance was responding to an emergency call for help pertaining to an unconscious and unresponsive woman. Ms. Hanley offered no evidence to controvert the proof that the ambulance was responding to an emergency call. Therefore, the Court held that the evidence was conclusive that the ambulance was responding to an emergency call.

The Court went on to say that for the "emergency exception" to apply, it must be proved that the employee's action in responding to an emergency call was "in compliance with the laws and ordinances applicable to emergency action, or in the absence of such law or ordinance – the action [was] not taken with conscious indifference or reckless disregard for the safety of others." See, §101.055(2) Tex. Civ. Prac. & Rem. Code. The Health District further offered evidence that District Code 2 and Code 3 use both lights and sirens, however, they did not state that lights and sirens were both required here. The description of the practices and the statement that lights and sirens were authorized give rise to a reasonable inference that the District's policy requires both lights and sirens. As stated previously, in a procedural setting, the Court is required to take as true all evidence favorable to Ms. Hanley and indulge reasonable inferences in her favor. Since Ms. Hanley contended that the siren was not being used, she created a question of fact by saying she did not remember hearing a siren. The Court concluded that the evidence that the witness did not hear the siren was "some evidence" that there was no siren to be heard. Standing alone, her subjective belief and failure to recall hearing a siren did raise a general issue of fact on this matter and the Court must resolve doubts in Ms. Hanley's favor. They concluded that her affirmative statement that she "did not hear sirens" was some evidence that there was no siren to be heard.

2. *Andrew Mata v. State Farm Mutual Insurance Company* (Tex. App. – Fourth Dist., Nov. 19, 2014).

This lawsuit arises out of the trial court's granting State Farm Mutual Automobile Insurance Company's ("State Farm") Motion for Summary Judgment asserting that Andrew Mata and Oscar Mata ("Matas") were not entitled to underinsured motorist coverage based on a definitional exclusion contained in the insurance policy. The trial court had granted State Farm's Motion for Summary Judgment and the Matas appealed. The Texas Court of Appeals for the Fourth District affirmed the trial court's judgment.

Melody Cavazos was driving her father's vehicle when she was involved in an

automobile accident. Andrew and Oscar Mata were passengers in the Cavazos' vehicle which was insured by State Farm. State Farm paid out its policy limits on the liability claims, however, denied the uninsured/underinsured motorist claims on the basis that the policy provides that "we will pay damages which a covered person is legally entitled to recover from the owner/operator of an uninsured motor vehicle in case of bodily injury sustained by a covered person, or property damage caused by an accident." The policy contains four definitions of the term "uninsured motor vehicle" as well as a definitional exclusion which states, an "uninsured motor vehicle" does not include any vehicle "owned by or furnished or available for the regular use of [the insured] or any family member." State Farm argued that the vehicle in which the Matas were passengers was furnished for the regular use of Melody Cavazos by her father, who was the insured under the policy.

The Courts interpret insurance policies in Texas according to the rules of contract construction. See, *American Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex. 2003). "If policy language is worded so that it can be given a definite or certain legal meaning, it is not ambiguous and we construe it as a matter of law." *Id.* at 157. When construing the policy's language, they must give effect to all contractual provisions so that none will be rendered meaningless.

The Matas asserted that the trial court erred in granting the summary judgment by ignoring the fourth definition of uninsured motor vehicle, despite the fact that State Farm focused their summary judgment on the definitional exclusion. The Matas never reference this exclusion in their brief or provide any basis on which the exclusion would not apply to the facts of that case. State Farm cited several cases supporting the application of the definitional exclusion, however, the Matas did not discuss either case in their brief or explain why those cases were not applicable. The Court felt like the cases cited by State Farm were virtually identical to the facts in this case and since the Matas did not make any public policy argument for not applying the definitional exclusion as to the facts of this case, the Court of Appeals held that the trial court did not err in granting summary judgment in State Farm and affirmed the trial court's decision.

3. *SeaBright Insurance Company v. Maximina Lopez, Beneficiary of Candelario Lopez, Deceased* (Tex. Sup. Ct., No. 14-0272, opinion delivered June 12, 2015).

This case involved a fatal automobile accident which occurred in September 2007 when Candelario Lopez, Deceased, was traveling to a new job site for his work. Interstate Treating, Inc. is a company that fabricated and installed materials for oil and gas processing, and Interstate hired Mr. Lopez in 1999 as an installer. Interstate's primary office and fabrication department was in Odessa, Texas, however, they provided installation services at other, often remote, locations. Mr. Lopez resided in Rio Grande City, Texas, but never worked in the vicinity of Rio Grande City during his employment with Interstate. When Interstate assigned Mr. Lopez to work at remote job sites, Mr. Lopez made his own living arrangements, usually staying in a motel. Interstate paid Mr. Lopez an hourly wage plus per diem for his lodging and food expenses and would provide him with a company vehicle to use, however, he was not paid for any time traveling to or from the job site.

In September 2007 he was assigned to work on the installation of a gas processing plant near Ridge, Texas, which was an estimated 450 miles from Mr. Lopez's home in Rio Grande City. Mr. Lopez chose to stay at a motel in Marlin, Texas, which was approximately 40 miles from Ridge. Interstate paid the vehicle's insurance, and provided Mr. Lopez with a credit card so that he could buy fuel for the vehicle. Interstate had no express policy regarding carpooling, however, on the day of the accident, Mr. Lopez was transporting two other Interstate employees to the Ridge job site when the accident occurred.

Maximina Lopez, the spouse of Candelario Lopez, sought death benefits from Interstate's workers' compensation insurance carrier, SeaBright Insurance Co. SeaBright denied coverage taking the position that Mr. Lopez was not in the course and scope of his employment at the time of the accident. Administrative proceedings were held and at each level they found in Maximina Lopez's favor. Suit was subsequently brought and both parties filed motions for summary judgment. The trial court granted Maximina Lopez's motion and denied SeaBright's motion, affirming the administrative decision.

SeaBright appealed and the Court of Appeals affirmed. 427 S.W.3d at 450-51. The Court of Appeals began its opinion by noting that "[f]or an employee's injury to be considered in the course and scope of employment, it must (1) relate to or originate in the employer's business, and (2) occur in the furtherance of the employer's business." *Id.* at 447. The Court of Appeals concluded that the accident occurred during Mr. Lopez's commute from his employer-provided housing to the job site, in an employer-provided vehicle, and in an area of the state he would not have been in "but for" his employment with Interstate. *Id.* at 450. The Court went on to hold that Mr. Lopez's travel to the job site met the second element, because such travel always furthers the employer's business. *Id.* at 447-48. The Court of Appeals affirmed the trial court's judgment.

The Texas Supreme Court granted judgment de novo as to both sides' summary judgments. The Court determined that the facts of this case were similar to those of *Texas Employers' Ins. Ass'n. v. Inge,* 208 S.W.2d 867 (Tex. 1948), in which Inge was working at a drilling site in Pecos County, Texas, some 31.5 miles from the nearest city. Inge was paid an hourly wage while working at the drilling site, but was not paid for travel time to and from the drilling site. The employer expected one of its employees to transport the other workers to and from the drilling site and paid that employee seven cents per mile for doing so. The company did not pay for gasoline or vehicle repairs or exercise control over Inge's route, speed, matter of driving, or schedule. Mr. Inge later died in a car accident on a return trip from work. Interstate had roughly 150 employees and about half of those employees worked at the Odessa office fabricating equipment and the other half worked on temporary assignment installing a gas processing plant near Ridge. The location of installation employees was never permanent and Interstate installed equipment in multiple states. Although Interstate could have hired local employees at each temporary remote job site, its general practice was to hire people who worked on previous installation jobs. The Court concluded that Interstate's business called for employing specialized non-local work crews in constantly changing, remote locations on temporary assignments. Mr. Lopez and his co-workers were paid per diem to offset lodging and food expenses, and Interstate provided him with a company vehicle to drive to and from the job site and paid the vehicle's fuel and insurance expenses. Accordingly, they held that the

relationship between Mr. Lopez's travel and his employment "is so close that it can fairly be said that the injury had to do with and originated in the work, business, trade or profession" of Interstate.

The Court felt that it was undisputed that Mr. Lopez was traveling only to his place of employment, rather than furthering any of his personal or private affairs and they concluded that Mr. Lopez was acting in the course and scope of his employment at the time of his death on September 11, 2007.