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If you have any questions or comments please feel free to contact us at the numbers above or via e-mail at paige@colanerifirm.com. FYI letters are also available at www.colanerifirm.com.

FYI
December 2007

WE ARE MOVING!

PLEASE NOTE OUR NEW OFFICE LOCATION AS OF DECEMBER 3, 2007:

2021 EAST LAMAR BOULEVARD
SUITE 100
ARLINGTON, TEXAS 76006
(Two blocks from our current location)

Our phone remains (817) 640-1588
Our fax remains (817) 640-1680

Trial Court's Oral Pronouncement and Docket Entry Were Insufficient to Reinstate Case—A Written Order Is Required. *Wallingford v Trinity Universal Insurance Co.* The trial court dismissed Plaintiff's worker's compensation case for want of prosecution. After receiving notice of dismissal, Plaintiff timely filed a Motion to Reinstate and participated in the hearing on the motion, at which time the trial court indicated it *intended* to reinstate Plaintiff's case. However, no order of reinstatement was signed. After the court's plenary jurisdiction expired, it sustained Defendant's Motion to Dismiss for lack of jurisdiction. On review, the Court of Appeals affirmed the dismissal order. The trial court lost jurisdiction because no order of reinstatement was signed during the period of its plenary jurisdiction. The trial court's pronouncement on the record at the hearing on the Motion to Reinstate, its printed docket entry, Plaintiff's submission of a proposed order and the conduct of the parties following the hearing (entering into an agreed scheduling order and conducting discovery) were not a substitute for the requirement of a signed order under Texas Rule of Civil Procedure 165a(3).

Insurer Was Liable for Towing and Storage Fees. *Canal Insurance Co. v Hopkins.* Plaintiff, owner of a towing and storage facility, filed suit for $12,690 in storage fees he incurred after a Texas state trooper had Defendant's wrecked tractor-trailer rig towed. At trial, the trooper could not recall whether the driver authorized towing of the rig, which had been declared a total loss. The trial court found Defendant and his insurer jointly and severally liable to Plaintiff for towing and storage of the vehicle. The insurer appealed and the Court of Appeals affirmed the trial court's finding that the insurer was liable under Texas Occupations Code §2303.156(b). The court, as fact finder, could have reasonably concluded that 1) the towing was not consensual, 2) the statute was not unconstitutionally vague and did not exempt insurers who fail to obtain title to the vehicle, 3) the insurer need not abandon the vehicle,

and 4) the statute did not unconstitutionally impair the insurance contract between Defendant and his insurer nor did it result in an unconstitutional taking of money from the insurer or violate the insurer's right to due process.

Settlement Agreement Must Be In Writing Or In Open Court To Be Effective. ***Knapp Medical Center v. De La Garza.*** Dr. De La Garza, M.D., sued Knapp Medical Center. During that trial, De La Garza's attorney offered to settle the case for the hospital's $1 million insurance policy limits. When this settlement demand was made, De La Garza's attorney understood that the hospital would contribute an additional $200,000 to the settlement, for a total of $1.2 million. After making the policy-limits demand, he learned that the hospital did not plan to contribute to the settlement, but the insurer had agreed to settle for the policy limit nevertheless. The hospital's attorney acknowledged that the insurer had agreed to settle the case for policy limits, and further confirmed that although an additional contribution from the hospital had been discussed, no agreement had been reached, and that the hospital would not contribute anything further to the settlement. Despite the disagreement about what had been promised, De La Garza agreed, on the record, to settle the underlying claims for $1 million, while stating he was reserving his right to collect the additional $200,000 from the hospital in subsequent lawsuit. The court accepted the agreement, and discharged the jury. De La Garza signed a Release, acknowledging the settlement funds as complete satisfaction of the claims asserted in the underlying litigation. De La Garza then sued the hospital for the disputed $200,000, alleging fraud and breach of an oral agreement that pre-dated the hearing in which the settlement terms were dictated into the record and accepted by the court. The trial court rendered judgment for De La Garza's $200,000 in damages and also his attorney's fees. On appeal, the Court of Appeals concluded that the testimony of one of the attorneys was sufficient to support the existence and breach of the settlement agreement, affirming the trial court's judgment. The Texas Supreme Court reversed, because Texas Rule of Civil Procedure 11 bars enforcement of a disputed oral settlement agreement. Rule 11 requires that agreements between attorneys and/or parties, touching any pending suit, be in writing, signed, and filed of record, or be made in open court, and entered of record, as a condition to enforcement. The failure to comply with Rule 1 barred De La Garza's claim against the hospital for the $200,000 over and above the $1 million policy limits.

Attorneys' Fees: When Damages Are Reduced On Appeal, Should There Be a New Trial on Attorneys' Fees? ***Bossier Chrysler-Dodge II, Inc. v. Rauschenberg.*** A divided Court of Appeals, although it reduced the trial court's damages award by eighty-seven percent, affirmed the associated attorney's fees award. On appeal, the Texas Supreme Court reversed and remanded to the Court of Appeals, with instructions to consider, in light of the opinion in *Barker v. Eckman*, 213 S.W.3d 306 (Tex. 2006), decided after the Court of Appeals' opinion, whether the case should be remanded for a new trial on attorneys' fees. The issue of attorneys' fees should ordinarily be retried, under similar circumstances, unless the appellate court is "reasonably certain that the jury was not significantly influenced by the erroneous damage award."

SEE YOU NEXT MONTH!