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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 October 2007 Legislative Update

FYI: We are pleased to announce that Janet K. Colaneri is now licensed to practice law in Arkansas. Go Hogs!

Given the number of new laws that took effect on September 1, 2007, we are taking this opportunity to provide you this summary of pertinent new legislation. All laws were effective September 1, 2007 unless otherwise noted.

House Bill 2061. *Liability of County and District Clerk Disclosure* (Effective March 28, 2007). County clerks are not liable for disclosing a document filed with the county or district clerk which contains a Social Security Number. Someone who wishes to have all but the last four numbers of his/her social security number removed from a document must file a written request with the clerk. Additionally, clerks are required to accept documents for filing even if the Social Security Number is displayed and are not required to confirm that a Social Security Number has been removed from a document prior to filing.

Senate Bill 1119. *Red Light Cameras.* Establishes a statutory framework under which red light camera systems will operate to ensure the system is not being used to generate revenue by restricting contracts

between cities and vendors so that compensation is not based on the number of citations issued.

House Bill 1355. *Dog Attacks.* A dog owner is criminally responsible for the first attack by a dog that causes serious bodily injury or death at a location other than the owner's property. This applies to an unprovoked attack in which the owner fails to secure the dog. The crime is punishable as a third degree felony for serious bodily injury and second degree felony for death. A defense to prosecution is available for professionals that deal with dogs on a regular basis.

Chapter 766, Health and Safety Code. *Residential Fire Alarms.* Requires that each single-family or two-family dwelling built in Texas must have working smoke detectors installed in compliance with the building code of the political subdivision where the home is built. In response, the **Insurance Code** has been amended to regulate the licensing of residential fire alarm technicians, requiring completion of required instruction from a school approved by the State Fire Marshall and consisting of at least eight hours of training on installing, servicing and maintaining single-family residential fire alarm systems.

Insurance Department Website. The Texas Department of Insurance, along with the Office of Public Insurance Counsel, is required to establish a single website that provides information to assist customers in making informed decisions regarding the purchase of residential property and personal automobile insurance. The website will include a description of each type of residential property and automobile insurance issued in the state along with a list of coverages, exclusions and restrictions under each policy. The website will also allow a side-by-side comparison of the features of each policy form.

Senate Bill 1951. *New District Courts:*

- El Paso County Criminal District Court Number 1 – effective September 1, 2007
- 397th Judicial District Court – Grayson County – effective September 15, 2008
- 418th District Court – Montgomery County – effective September 1, 2007
- 423rd District Court – Bastrop County – effective October 1, 2007
- 429th Judicial District Court – Collin County – effective January 1, 2009
- 435th District Court – Montgomery County – effective September 1, 2007
- 444th District Court – Cameron County – effective September 1, 2007
- 445th District Court – Cameron County – effective September 1, 2007
- 448th District Court – El Paso County – effective September 1, 2007
- 449th District Court – Hidalgo County – effective September 1, 2007
- 506th District Court – Grimes and Waller Counties – effective September 1, 2007

Additional County Courts at Law:

- **House Bill 682** created Montgomery County Court at Law Number 5
- **House Bill 4008** created El Paso County Criminal Courts at Law Number 3 and Number 4. Court Number 4 will give preference to criminal cases involving family violence.
- **House Bill 4139** (effective January 1, 2011) created Van Zandt County Court at Law.
- **Senate Bill 660** (effective January 1, 2008) created Travis County Court at Law Number 8, which will give preference to criminal cases.
- **Senate Bill 2018** created Hunt County Court at Law Number 2.

Justice Courts:

- **Senate Bill 618** – Increases the upper jurisdictional limit in justice court from \$5,000 to \$10,000. Also specifies that a corporation need not be represented by an attorney in justice court.
- **Senate Bill 1413** – Increases the minimum amount required for a judgment in justice court from \$20 to \$250.
- **Senate Bill 1416** – Increases the minimum amount in controversy required for an appeal from small claims court from \$20 to \$250.

CASE LAW UPDATES

Severance of Extracontractual Claims Against Insurer Mandated *In Re: Allstate Insurance Company.* Auto insurer appealed trial court's order

denying its motion to sever and abate extracontractual claims in a suit where Plaintiffs sued insurer over property damage to their RV after a tree fell on it. Insurer tendered a check for \$867 for damage to the vehicle. Plaintiffs filed suit seeking actual damages of \$7,989 and also alleged breach of contract and extracontractual claims. Insurer made a \$1,000 settlement offer. On appeal from the order denying Allstate's Motion to Sever and Abate, the Court of Appeals held that where an insurer has made an offer to settle a disputed contract claim, the trial court is confronted with a dilemma and severance of the two types of claims (contractual and extracontractual) is the only solution.

Causation - Proximity Alone Does Not Meet Standards Of Scientific Reliability. *Guevara v. Ferrer*. On October 17, 2002, 86-year-old Plaintiff was a passenger in a car driven by his son-in-law when they struck a car that turned in front of them. Both Plaintiff and his son-in-law were injured and taken to the hospital emergency room by ambulance. After Plaintiff died in May 2003, suit was filed by Plaintiff's wife, daughter and son-in-law as a result of the injuries Plaintiff and his son-in-law suffered in the accident. The only testimony at trial regarding damages came from Plaintiff's daughter and son-in-law. The jury rendered a verdict, which was affirmed by the court of appeals, finding that the automobile accident caused medical expenses of over \$1 million. There was no scientific evidence of a causal relation between the accident and the injury. Supreme Court reversed and remanded holding that only lay evidence was offered to prove that the accident caused all the

medical expenses, when expert evidence was required to prove many of them. Proximity in time alone does not meet standards of scientific reliability and does not, by itself, support an inference of medical causation. The importance of focusing on scientific reliability is to ensure that decision makers will not be misled by the fallacy of assuming that simply because a biological injury occurred after an accident that it must have been caused by the accident.

This is not to say that evidence of the closeness in time between an event and subsequent injuries is irrelevant to causation. Evidence of an event followed closely by the manifestation of or treatment for conditions that were not apparent before the event raises suspicion that the event at issue caused the conditions. Such suspicion alone is not legally sufficient to support a finding of legal causation. However, when combined with other evidence of causation, conditions that exhibit themselves or which are diagnosed shortly after an event may be probative in determining causation.

In personal injury cases, trial evidence generally includes evidence of the condition of the injured person before the accident, the circumstances surrounding the accident, and the course of the injured person's physical condition and progress after the accident. In this case, there was lay testimony about decedent's pre-accident physical condition, his activities and other events leading up to the accident, the accident, the police report and post-accident events including medical treatments. This type of evidence "establishing a sequence of events which

provides a strong, logically traceable connection between the event and the condition” could be sufficient to support a causation finding between the automobile accident and basic physical conditions which (1) are within the common knowledge and experience of laypersons, (2) did not exist before the accident, (3) appeared after and close in time to the accident, and (4) are within the common knowledge and experience of laypersons to be caused by automobile accidents. For example, if a Plaintiff had been pulled from a damaged automobile with noticeable injuries such as broken bones or lacerations, and undisputed evidence which reasonable jurors could not disbelieve showed that he did not have such injuries before the accident, then the physical conditions and causal relationship between the accident and the conditions would ordinarily be within the general experience and common knowledge of laypersons and would therefore it would be within the general experience and common knowledge of laypersons that the accident caused the injuries, at least to some degree.

Medical Affidavits. Affidavits proving up medical bills are evidence that expenses were reasonable in amount and necessary for treatment of Plaintiff’s conditions, but the bills are not evidence of what of Plaintiff’s conditions were caused by the accident.

Allstate v. Accident and Injury Verdict Overturned. *Allstate Insurance Co.; Allstate Indemnity Co.; Allstate Property and Casualty Insurance Co.; Boston Old Colony Insurance Co.; Glens Falls Insurance Co. v. Receivable Finance Company, L.L.C., et al.* In an appeal from

a jury verdict rendered in favor of Allstate for fraud and exemplary damages awarded against Accident and Injury and its associated subsidiaries, the Fifth Circuit Court of Appeals reversed the jury findings and rendered a verdict in favor of Accident and Injury. The Court determined that Allstate failed to prove *actual reliance* by Allstate and Encompass on any Accident and Injury misrepresentation. In order to prevail on a common law claim of fraud, Allstate and Encompass needed to present legally sufficient evidence of actual reliance, which they failed to do.

It should be noted that in reversing the jury’s findings, the Fifth Circuit noted that “We are sympathetic with the no-alternative position that Allstate and Encompass frequently emphasized throughout trial. We are also deeply shocked and saddened at the dishonest practices of many of the defendants as reflected by the evidence, as well, apparently, of the lawyers with whom they worked.” However, the Court went on to state “On the evidence that was introduced at trial, a reasonable jury could not have found that Allstate actually relied on any misrepresentation from A&I. As such, the district court should not have submitted the common law fraud claim to the jury.”

SEE YOU NEXT MONTH!