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## Insurance Law

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# INSURANCE LAW

by

Royal H. Brin, Jr.\*

## I. AUTOMOBILE AND LIABILITY INSURANCE

*Uninsured Motorist Coverage.* In terms of number and importance, the most significant developments in automobile and liability insurance during the period encompassed by this survey occurred again in the area of uninsured motorists insurance.

In *Stagg v. Travelers Insurance Co.*<sup>1</sup> the plaintiffs, two brothers and their sister, were injured in a collision with an uninsured motorist. The three minor children brought suit on the uninsured motorist's endorsement attached to a garage liability policy issued by defendant to their father. Although the policy covered two cars, the endorsement only applied to one. Defendant insurer claimed that the automobile in which plaintiffs had been injured was not the auto mentioned in the uninsured motorist endorsement, but rather, was an auto owned by the plaintiff-son. In sustaining the trial court's judgment for defendant, the court of civil appeals held that the automobile involved in the collision was not the "one owned auto" referred to in the uninsured motorist rider on which suit was brought, regardless of whether the father or the son was the true owner. Since the endorsement did not apply to plaintiff's car, the exclusion in the policy itself of "bodily injury to an insured while occupying a highway vehicle (other than an insured highway vehicle) owned by the named insured . . . or any relative resident in the same household as the named or designated insured . . ."<sup>2</sup> was fully applicable and barred recovery. The court dismissed plaintiff's contention that the exclusion was void as an improper restriction on coverage, noting that its validity had been upheld in other jurisdictions considering the question, and that the Texas Insurance Code<sup>3</sup> in no way prohibits the exclu-

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1. 486 S.W.2d 399 (Tex. Civ. App.—Beaumont 1972).

2. *Id.* at 400.

3. (1) No automobile liability insurance (including insurance issued pursuant to an Assigned Risk Plan established under authority of Section 35 of the Texas Motor Vehicle Safety-Responsibility Act), covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless coverage is provided therein or supplemental thereto, in the limits described in the Texas Motor Vehicle Safety-Responsibility Act, under provisions prescribed by the Board, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. The coverage required under this Article shall not be applicable where any insured named in the policy shall reject the coverage; and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured

sionary language at issue. The court construed the provision as designed to require the named insured to secure additional uninsured motorists coverage for himself and for vehicles owned by relative residents of the same household and sanctioned its inclusion in uninsured motorist insurance policies.

A few months later, the reasoning in *Stagg* was adopted by the El Paso court of civil appeals in construing a similar policy provision in *Garcia v. Southern Farm Bureau Casualty Insurance Co.*<sup>4</sup> In this case, the automobile involved in a collision with an uninsured motorist was owned by the father of the named insured, who resided in the same household. A summary judgment was affirmed denying coverage to the named insured and to his passenger who was also an insured under the policy definition. The court buttressed the *Stagg* rationale by noting that the provision of article 5.06-1 giving the insured the option to reject uninsured motorist coverage indicates that writing a policy without such coverage would not violate public policy.

In *Bilbrey v. American Automobile Insurance Co.*<sup>5</sup> the Eastland court of civil appeals delivered a somewhat cryptic opinion, holding that the exclusion of an automobile furnished for the regular use of a named insured from the definition of uninsured automobile did not preclude an insured driving such an automobile from recovering under his uninsured motorist endorsement. In support of its opinion that exclusions and other provisions of the policy did not limit or abridge the uninsured motorists coverage, the court cited an Ohio case<sup>6</sup> which held that such coverage is personal accident coverage<sup>7</sup> and becomes effective whenever the named insured sustains injury as a result of the operation by a third party of an automobile without bodily injury liability coverage. The Ohio court found that the coverage was in no way dependent on the character of the vehicle, if any, being operated by the insured at the time of the accident. The result and reasoning in *Bilbrey* appear contrary to *Stagg* and *Garcia*, although a different exclusion is involved.

Attempts to limit payments under uninsured motorists insurance policies in the form of offsets for workmen's compensation or medical insurance payments have met with summary rejection. In *Fidelity & Casualty Co. v. McMahon* a Texas appellate court was faced for the first time with determining the validity of a policy provision approved by the Texas Board of Insurance reducing the amount payable for bodily injury under an uninsured motorists endorsement by "the amount paid and the present value of all amounts pay-

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has rejected the coverage in connection with a policy previously issued to him by the same insurer.

TEX. INS. CODE ANN. art. 5.06-1 (Supp. 1974).

4. 490 S.W.2d 616 (Tex. Civ. App.—El Paso 1973).

5. 495 S.W.2d 375 (Tex. Civ. App.—Eastland 1973).

6. *Motorists Mut. Ins. Co. v. Bittler*, 14 Ohio Misc. 23, 235 N.E.2d 745 (C.P. 1968).

7. See *Bogart v. Twin City Fire Ins. Co.*, 473 F.2d 619 (5th Cir. 1973), and *Reliance Ins. Co. v. Falknor*, 492 S.W.2d 721 (Tex. Civ. App.—Houston [1st Dist.] 1973), *error ref. n.r.e.*, denying statutory penalties and attorney's fees to plaintiffs recovering judgments on uninsured motorists insurance policies on the rationale that such insurance is *not* accident insurance.

able on account of bodily injury under any Workmen's Compensation law."<sup>8</sup> The majority found the Texas Supreme Court's decision in *American Liberty Insurance Co. v. Ranzau*,<sup>9</sup> holding that an attempt to limit recovery with an "other insurance" provision was invalid, to be dispositive of the issue and affirmed the trial court's refusal to give effect to the provision. In construing the same provision a few months later the court in *Hamaker v. American States Insurance Co.*<sup>10</sup> reached the same result without any apparent reliance on *McMahon*.

In two other noteworthy cases courts struck down a provision in an uninsured motorists policy which relieved the insurance company of that part of the damages representing expenses for medical services paid or payable under another portion of the same policy. In *Bogart v. Twin City Fire Insurance Co.*<sup>11</sup> the Fifth Circuit Court of Appeals held the medical payments offset clause void as contrary to public policy. With no Texas appellate case directly on point, the court justified its holding as a logical extension of the decisions of Texas courts in *Fidelity & Casualty Co. v. Gatlin*,<sup>12</sup> *Ranzau*, and *McMahon*. The court's assessment of the provision's probable treatment by state courts was proven accurate some months later when the Waco court of civil appeals adopted the rationale and resolution of the *Bogart* case in *Dhane v. Trinity Universal Insurance Co.*<sup>13</sup>

Both *Bogart* and *Dhane* also dealt with the problem of the right of an insured to stack uninsured motorists benefits. The plaintiffs in both cases had paid separate specified premiums for uninsured motorists coverage of multiple vehicles described in their respective policies. A four-dollar premium was paid for coverage for automobile number one which in both cases was the auto involved in the collision and a three-dollar premium was paid for coverage for each additional insured automobile. The plaintiffs maintained that the payment of premiums for the additional automobiles also protected them while riding in automobile number one. In each case the court held that such a conclusion was precluded by the Texas Supreme Court's decision in *Ranzau*.<sup>14</sup> The courts found, however, that the "two or more automobiles" clause<sup>15</sup> allowed stacking of medical benefits under the policies.

Two other portions of the court's opinion in *Bogart* deserve attention. First, the court denied the right of an intervening workmen's compensation carrier to subrogate itself to any part of the judgment against the uninsured motorists carrier because the statute defining subrogation rights made no

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8. 487 S.W.2d 371 (Tex. Civ. App.—Beaumont 1972), *error ref. n.r.e.*

9. 481 S.W.2d 793 (Tex. 1972).

10. 493 S.W.2d 893 (Tex. Civ. App.—Houston [1st Dist.] 1973), *error ref. n.r.e.*

11. 473 F.2d 619 (5th Cir. 1973).

12. 470 S.W.2d 924 (Tex. Civ. App.—Dallas 1971). For a synopsis of the holding and history of *Gatlin*, see Brin, *Insurance Law, Annual Survey of Texas Law*, 27 Sw. L.J. 135 (1973).

13. 497 S.W.2d 323 (Tex. Civ. App.—Waco 1973), *error granted*.

14. 481 S.W.2d 793 (Tex. 1972).

15. "When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each." This clause was not applicable to the uninsured motorists coverage. 497 S.W.2d at 326.

provision for such recovery<sup>16</sup> and because the policy in question clearly excluded workmen's compensation carriers from benefiting under its uninsured motorists section.<sup>17</sup> Secondly, the court overruled the lower court's award of penalties and attorney's fees on the uninsured motorists insurance recovery, holding that the statute governing their award was not designed to apply to uninsured motorists coverage, and further, that the peculiar nature of that coverage rendered statutory penalties distinctly inappropriate. Sanction for this latter finding was implicitly given subsequently in *Reliance Insurance Co. v. Falknor*<sup>18</sup> which held that uninsured motorists insurance is not accident insurance and, consequently, a judgment under such coverage provides no basis for an award of statutory penalties or attorney's fees.

In spite of *Bogart* and *Dhane*, the issue of stacking uninsured motorists coverage is by no means settled in Texas. Two cases,<sup>19</sup> criticized by the court in *Dhane*, allowed an insured who had paid separate premiums for uninsured motorists coverage on more than one automobile, to stack the benefits attributed to each premium payment. In view of the conflict, the Texas Supreme Court has granted writs, and a final resolution may be expected shortly.

*Subrogation.* The rights of an uninsured motorists insurance carrier to recover from the uninsured motorist for damages sustained by the insured are governed by the rules ordinarily applicable to subrogation. Therefore, if the subrogor's claim is barred by the statute of limitations, the subrogee's claim is also barred. This result was reached in *Sheppard v. State Farm Mutual Automobile Insurance Co.*<sup>20</sup> over the insurer's contention that the appropriate rule should be analogous to that employed in workmen's compensation cases, that is, that the insurer has no cause of action against the uninsured motorist until its liability to the insured is adjudged.

*"Sistership Exclusion."* In *Gulf Insurance Co. v. Parker Products*<sup>21</sup> the supreme court affirmed the holding of the court of civil appeals<sup>22</sup> that the appellant's general liability policy provided coverage for a claim against its insured arising out of the insured's sale of candy mix flavorings containing paper to an ice cream maker. The flavorings were incorporated into the ice cream maker's product, which was thereby rendered worthless. The insurance company contended that the so-called "sistership exclusion"<sup>23</sup> barred

16. See TEX. REV. CIV. STAT. ANN. art. 8307, § 6a (1967).

17. "This policy does not apply under Section III [uninsured motorists section] so as to inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law." 473 F.2d at 628 n.15.

18. 492 S.W.2d 721 (Tex. Civ. App.—Houston [1st Dist.] 1973), *error ref. n.r.e.*

19. *Westchester Fire Ins. Co. v. Tucker*, 494 S.W.2d 654 (Tex. Civ. App.—Houston [14th Dist.] 1973), *error granted*; *Hartford Accident & Indem. Co. v. Turner*, 498 S.W.2d 8 (Tex. Civ. App.—Houston [1st Dist.] 1973) (in which the supreme court has indicated that it is withholding action on the application for a writ pending its decisions in *Dhane* and *Tucker*).

20. 496 S.W.2d 216 (Tex. Civ. App.—Houston [14th Dist.] 1973).

21. 498 S.W.2d 676 (Tex. 1973).

22. 486 S.W.2d 610 (Tex. Civ. App.—Fort Worth 1972).

23. The insurance does not apply:

(n) to damages claimed for the withdrawal, inspection, repair, replace-

Parker's recovery. Finding no cases construing this relatively new provision, the court adopted a hornbook construction confining the exclusion to damages other than injury to or destruction of the property itself.

*Estoppel.* An insured's signature on a general non-waiver agreement does not prevent an insurance company when it is using the same attorney to represent the insured in a personal injury action, and simultaneously to work against the insured on the coverage question, from being estopped to assert denial of coverage. The company and the attorney have an obligation to notify the insured of any actual or potential conflict of interest, and their silence in the face of such a conflict, which prejudices the insured, may give rise to an estoppel from which the non-waiver agreement affords no relief. The court in *Employers Casualty Co. v. Tilley*<sup>24</sup> held that prejudice sufficient to effect an estoppel was shown by the defendant, who made his employees available for statements on his own time and at his own expense, and was not advised of the conflicting interests of his attorney.

*Notice.* In *Lopez v. Royal Indemnity Co.*<sup>25</sup> the court examined application to uninsured motorist coverage of the notice provisions in an automobile liability policy. The court assumed without deciding that the general notice provision applied to the coverage, but went on to hold that in determining whether notice was given as soon as practicable, the proper rule is one of discovery similar to that employed in medical malpractice cases. In *Dairyland County Mutual Insurance Co. v. Roman*<sup>26</sup> the supreme court rejected the court of civil appeals holding<sup>27</sup> that a minor is excused from complying with the notice provisions of an accident insurance policy. Rather, minority is but one circumstance to consider in determining whether notice was given as soon as practicable.

*Vehicular Definition.* In an expansion of the holding reported last year that a pickup truck is included within the definition of private passenger automobile,<sup>28</sup> the court in *Hartford Accident & Indemnity Corp. v. Lowery*<sup>29</sup> held inapplicable an exclusion of coverage when the insured vehicle is towing a trailer, unless the trailer is designed for use with a private passenger automobile. In *Lowery* the vehicle involved in the accident was a pickup towing a gooseneck trailer. A gooseneck trailer is designed for use with a truck and cannot be used with a sedan-type automobile. Over a vigorous dissent, the majority held that since the pickup was a private passenger automobile under the terms of the policy, the exclusion clause had no applica-

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ment, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein . . . .

498 S.W.2d at 678.

24. 496 S.W.2d 552 (Tex. 1973).

25. 496 S.W.2d 942 (Tex. Civ. App.—San Antonio 1973).

26. 498 S.W.2d 154 (Tex. 1973).

27. 486 S.W.2d 847 (Tex. Civ. App.—San Antonio 1972).

28. *State Farm Mut. Auto. Ins. Co. v. Durrett*, 472 S.W.2d 214 (Tex. Civ. App.—Fort Worth 1971).

29. 490 S.W.2d 935 (Tex. Civ. App.—Beaumont 1973), *error ref. n.r.e.*

tion because the gooseneck trailer was designed for use with this type of private passenger automobile.

Coverage under a policy insuring against direct loss from "land vehicles" where that term is not defined is not limited to instances where the vehicle is being used as a vehicle. In *North River Insurance Co. v. Pomerantz*<sup>30</sup> the court employed this construction to affirm a finding that the appellant was liable for damages to a wiring system caused when the bucket of a backhoe attached to a tractor hit an underground electrical conduit while digging a ditch. The court held that the tractor did not cease to be a land vehicle by being made stationary and by being used for purposes other than transportation.

*Owned Automobile.* A standard automobile policy provision defining owned automobile as a "private passenger, a farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded, . . ." <sup>31</sup> eliminates ownership as a prerequisite to coverage, so that a non-owner can purchase and be covered by a policy on which he is the named insured without actually owning the vehicle described in the policy. In *Snyder v. Allstate Insurance Co.*<sup>32</sup> the court held that the defendant insurance company had an obligation to defend all actions and pay all claims arising out of a collision involving the "owned vehicle" which was given by the named insured to his daughter, and which was being driven by a third party at her request at the time of the accident.

*Intentional Property Damage.* A parent, sued for property damage intentionally caused by his eleven-year-old son,<sup>33</sup> was granted reimbursement for the amount of the judgment under his Texas standard homeowner's policy in *Walker v. Lumbermen's Mutual Casualty Co.*<sup>34</sup> The insured claimed coverage under the "personal liability" section of his policy, while the insurer maintained its only coverage was under the "physical damage to property of others" section, and limited to \$250. The court allowed recovery of the entire amount of the judgment, holding that the two coverages were separate, with neither restricting the other.

In *Argonaut Southwest Insurance Co. v. Maupin*<sup>35</sup> the Texas Supreme

30. 492 S.W.2d 312 (Tex. Civ. App.—Houston [14th Dist.] 1973), *error ref. n.r.e.*

31. *Snyder v. Allstate Ins. Co.*, 485 S.W.2d 769, 771 (Tex. 1972).

32. *Id.*

33. The suit was brought under TEX. REV. CIV. STAT. ANN. art. 5923-1 (Supp. 1973):

Section 1. Any property owner, including any municipal corporation, county, school district, or other political subdivision of the State of Texas, or any department or agency of the State of Texas, or any person, partnership, corporation or association, or any religious organization whether incorporated or unincorporated, shall be entitled to recover actual damages suffered from the parents of any minor under the age of eighteen (18) years and over the age of ten (10), where such minor child maliciously and willfully damages or destroys property, real, personal or mixed, belonging to such owner. However, this Act shall not apply to parents whose parental custody and control of such child has been removed by court order, decree or judgment.

This provision was repealed, effective Jan. 1, 1974, by ch. 543, § 3, [1973] Tex. Laws 1458.

34. 491 S.W.2d 696 (Tex. Civ. App.—Eastland 1973).

35. 500 S.W.2d 633 (Tex. 1973).

Court reversed a decision of the court of civil appeals which had held that a construction company which removed borrow material from land, pursuant to an agreement with one who was not the owner, was entitled to recover from his insurer the amount of a judgment rendered against him in a trespass action brought by the true owners. The court of civil appeals had held that the removal of the material was an occurrence or accident within the terms of the policy since plaintiffs had no intention of injuring the true owners of the property.<sup>36</sup> The supreme court reversed, holding that the removal was intentional and deliberate, and also that the policy did not purport to offer insurance against liability for damages caused by mistake or error.

## II. LIFE, HEALTH, AND ACCIDENT INSURANCE

*Poisoning.* The widow of a policeman who died as a result of carbon monoxide poisoning and suffocation from lack of oxygen while "staked out" in a police patrol car was denied recovery under a policy of life insurance by virtue of an exclusion for "death . . . result[ing] from or . . . caused, directly or indirectly, by . . . [p]oisoning . . . (other than that occurring simultaneously with and in consequence of accidental death . . . )."<sup>37</sup> In the face of a highly critical dissent, the court based its holding on a 1933 Texas civil appeals case construing similar policy language and reaching the same result.<sup>38</sup>

*Mail-Order Insurance.* In October or November of 1969 Loy L. Hooks received by mail an advertisement and application for an accident insurance policy. He completed the application and forwarded it by mail along with a twenty-five-cent premium to the soliciting company, which received it November 13 or 14. On November 15 Hooks was killed in an automobile accident. His mother brought suit against the company seeking recovery on the policy after her claim was denied on the ground that the policy was not effective before November 21, when it was approved by the company.<sup>39</sup>

36. 485 S.W.2d 291 (Tex. Civ. App.—Austin 1972). Pertinent provisions of the policy are as follows:

1. Coverage D—Property damage Liability—Except Automobile To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident.
2. Endorsement No. 7—The letters UND-1680-RI: 'Occurrence' Basis-Property Damage. It is agreed that such insurance as is afforded by the policy under Coverage D—Property Damage Liability—Except Automobile applies subject to the following provisions:
  1. The word 'accident' except as used in Paragraph II hereof is amended to read 'Occurrence.'
  2. The word 'occurrence' as used herein shall mean either (a) an accident, or (b) in the absence of an accident, a condition for which the insured is responsible which during the policy period causes physical injury to or destruction of property which was not intended.

*Id.* at 293 n.1.

37. *Pickering v. First Pyramid Life Ins. Co. of America*, 491 S.W.2d 184, 185 (Tex. Civ. App.—Beaumont 1973), *error ref. n.r.e.*

38. *United Fid. Life Ins. Co. v. Roach*, 63 S.W.2d 723 (Tex. Civ. App.—Amarillo 1933), *error ref.*

39. *Fritz v. Old Am. Ins. Co.*, 354 F. Supp. 514 (S.D. Tex. 1973).



The court examined the ordinary rules of offer and acceptance under which the contract would not be effective until accepted by the company and found them inappropriate in the mail-order context. Looking to decisions in other jurisdictions which had considered mail-order insurance and machine-dispensed flight insurance, the court adopted a "reasonable expectations" test to determine when the contract became effective. It concluded that the brochure advertising the policy fostered the reasonable expectation that coverage began as soon as the application was deposited in the mail, and rendered judgment for the plaintiff.

*Scope of Coverage.* A hospital, surgical, and medical policy providing payment for the cost of use of an oxygen tent does not entitle the insured to reimbursement for the cost of inhalation therapy. Relying on the rule of construction that terms of insurance policies should be construed in accordance with their plain, ordinary, and accepted meanings, the court in *Republic Bankers Life Insurance Co. v. Gillard*<sup>40</sup> deduced from various dictionaries that inhalation therapy is not synonymous with oxygen tent and, hence, was not encompassed by the coverage of the policy in question.

### III. FIRE AND CASUALTY

*Damages.* In *Lerer Realty Corp. v. MFB Mutual Insurance Co.*<sup>41</sup> suit was brought on a windstorm policy with an endorsement covering the cost, as of the date of loss, of replacement in new condition with materials of like size, kind, and quality, subject to the conditions that the repair, rebuilding, or replacement had to be made within a reasonable time, and that total liability was not to exceed the cost of repair, the cost to rebuild, or the actual expenditure incurred in rebuilding, repairing, or replacing. The jury found that plaintiff's delay (two-and-one-half years as of the time of trial) in rebuilding was not unreasonable and awarded \$119,400, the actual cost of replacing the building. The court modified this award to allow recovery only of the actual cash value of the property destroyed, reasoning that the endorsement did not come into play unless the insured actually repaired, rebuilt, or replaced within a reasonable time.<sup>42</sup>

*Estoppel.* In reviewing *Republic Insurance Co. v. Silverton Elevators*,<sup>43</sup> reported here last year, the supreme court affirmed the lower courts' holding that an insurance company issuing a fire policy on household goods and collecting premiums therefor with knowledge that the household goods were not owned by the named insured waived any requirement that the named insured own or possess a beneficial interest in the property insured.<sup>44</sup>

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40. 496 S.W.2d 231 (Tex. Civ. App.—Waco 1973), *error ref. n.r.e.*

41. 474 F.2d 410 (5th Cir. 1973).

42. In his dissent, Judge Godbold argued that unless the insured failed to repair or replace within a reasonable time, the insurer was obligated to pay either the cost to repair or the cost to rebuild or replace, whichever was smaller.

43. 477 S.W.2d 336 (Tex. Civ. App.—Amarillo 1972), *error granted, reported in Brin, supra* note 12, at 137.

44. 493 S.W.2d 748 (Tex. 1973).

## IV. STATUTORY DEVELOPMENTS

*Comparative Negligence.* The Texas Modified Comparative Negligence Act,<sup>45</sup> effective September 1, 1973, substitutes a form of comparative negligence for the former rule of contributory negligence as a complete bar. It is being discussed at greater length in the *Survey* article on tort law, but with reference to its effect in the insurance field, it is particularly noteworthy that section 2(f) provides that where the application of the rules contained in previous subsections would result in two claimants who are liable to one another in damages, the claimant who is liable for the greater amount is entitled to a credit in the amount owed him by the other claimant. This is particularly important where both parties are insured. Under the Wisconsin statute, there is no such credit provision, so that the end result can well be that each insurer must pay the opposing party.<sup>46</sup> Here, however, only one insurer would have to pay, and its net liability would be reduced by the amount that its insured would otherwise have recovered. This could well result in some degree of proliferation of cross-actions.

As to the general effect of comparative negligence, it should tend to promote settlements between insurers and claimants, since it will no longer be an all-or-nothing proposition.

*Personal Injury Protection Coverage.* The new article 5.06-3 of the Insurance Code makes it mandatory that any automobile liability policy provide no-fault first party coverage not to exceed \$2,500 per person for medical expenses and loss of income or, if one is not an income producer, reimbursement for necessary and reasonable expenses for services ordinarily performed by the injured person for care and maintenance of the family or family household.<sup>47</sup> The expenses must be incurred within three years of the date of accident. Intentional injury to one's self is excluded, along with injury received in the commission of a felony or while seeking to elude arrest.

*Guest Statute.* The Texas guest statute was amended to make the requirement of gross negligence applicable only to a claimant related within the second degree of consanguinity or affinity to the owner or operator of a motor vehicle.<sup>48</sup> Again, the predominant impact of this amendment is in the tort field, but section 1(c) has a direct impact on insurance carriers. It provides that when any claim is made by a guest against the owner, or operator, or his liability insurance carrier, there shall be an offset against any recovery in such amounts as may have been paid by the owner, operator, or insurer for medical expenses of the guest. There is a further proviso that nothing in this subsection will authorize a direct action against a liability insurer not otherwise presently authorized.

*The Unfair Claims Settlement Practice Act.* This new statute,<sup>49</sup> effective

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45. TEX. REV. CIV. STAT. ANN. art. 2212a (Supp. 1974).

46. WIS. STAT. § 895.045 (Supp. 1973).

47. TEX. INS. CODE ANN. art. 5.06-3 (Supp. 1974).

48. TEX. REV. CIV. STAT. ANN. art. 6701b (Supp. 1974).

49. TEX. INS. CODE ANN. art. 21.21-2 (Supp. 1974).

August 27, 1973, prohibits unfair claim settlement practices such as knowingly misrepresenting coverage provisions, unreasonable delay in answering claims communications, failing to adopt and carry out reasonable standards for prompt claim investigation, lack of good faith in making prompt and fair settlement of reasonable, clear claims, making offers so unduly low as to require filing of suit, failure to maintain a complete record of complaints received during the preceding three years or since the date of the last examination by the commissioner, or other actions as defined by the board, if committed without cause and performed with such frequency as determined by the State Board of Insurance. If the board finds an insurer substantially out of line and in need of closer supervision, it may require reports at such intervals as it deems necessary. The board may also hold hearings to review alleged violations and, upon finding them, can issue cease and desist orders. The certificate of authority of an insurer who fails to comply with such an order can be revoked or suspended by the board.