AUTO POLICIES – DEPARTURE FROM STANDARD FORMS & WHAT IT MEANS

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I. ANALYSIS OF NON-STANDARD POLICY LANGUAGE

For years the Texas Department of Insurance (TDI) required auto insurance companies to use standardized language and provide standardized coverage for their insurance customers. With standardized language and coverage, Texas insurance consumers knew the standard language contained in the Texas Personal Auto Policy and consumers were able to do price comparisons for policies. In 2005, the TDI changed the rules and began allowing non-standard auto insurance policies to be sold in Texas. This change in the standard auto policy provides more opportunities for carriers to limit their liability. However, the changes in standard language will likely increase the number of challenges raised to coverage determinations by insureds. This article will explore these departures from standard auto forms and what it means for insurers and insureds.

II. WHAT IS NON-STANDARD INSURANCE?

There are generally two types of auto insurance available to drivers: standard coverage and non-standard coverage. Standard policies are less expensive and are issued to good drivers with solid driving histories. Non-standard insurance is issued to drivers with subpar driving records or who do not have prior insurance coverage. Non-standard premiums are normally much higher, and can cause a driver to reduce coverage amounts so he can afford the policy.

The non-standard auto market represents $20 billion – or about18% - of the $107 billion personal auto insurance market in the United States.[1] The term "non-standard" auto insurance refers to a particular type of auto insurance designed to cover drivers who find it difficult or impossible to obtain coverage at affordable rates, if they can find it at all. Typically, applicants for this sort of insurance are considered to be high risk with a serious violation, such as a DUI on their record. Other drivers are considered high risk if they have had multiple accidents, bodily injury accidents or drive high risk cars such as sports cars and custom built cars. Essentially, insurers make assessments based the driving record and underwriting evaluation of a driver. If a driver is not considered a favorable risk, many companies will find the driver ineligible for standard rates and charge non-standard rates for coverage. Due to more stringent drunk driving laws and a more competitive insurance industry, non-standard insurance is becoming more common with many newer companies offering this coverage exclusively.

Typically, non-standard policies are 1-month, 6-month, or year policies.[2] One month policies are typically purchased by drivers who seek to satisfy the laws regarding proof of insurance and license plates.[3] There is more instability in market with one-month policies. Additionally, annual policies tend to delay rate increases for premiums which may not be appealing to certain insurers.[4]

Non-standard auto insurance is affected by the same business, economic and legal forces influencing the standard auto market. Claim frequency and severity have enormous impact in a market with relatively little margin. However, the non-standard market differs in one critical respect: customer stability. Drivers enter and leave the market based on driving experience, which can exact significant pressure on the non-standard auto insurer. To combat turnover and price pressures, insurers leverage marketing and claims databases as well as affiliations with standard auto insurers to serve drivers graduating from the non-standard market.

A. Texas's Non-Standard Insurance Market

The nonstandard automobile insurance market provides insurance for motorists who have poor credit histories, poor driving records, prior accidents, or other underwriting concerns that

[1] *A Closer Look at the Non-Standard Automobile Reinsurance Market*, John Capizzi, PARTNERREVIEWS, June 2005.

[2] *Id.*

[3] *Id.*

[4] *Id.*

make it difficult for those motorists to obtain insurance through the traditional market. In Texas, the nonstandard insurance market is structured through a tripartite relationship among a county mutual insurance company, a managing general agency ("MGA"), and one or more reinsurance companies. A county mutual insurance company ("county mutual") is an insurance carrier that is exempt from most state insurance laws.[5] The county mutual acts as the insurance carrier and allows its policies to be issued by its agents. In exchange for allowing policies to be issued pursuant to its authority to conduct the business of insurance, the county mutual receives a "front fee," that is, a percentage of the premiums written in a particular program.

From an operational standpoint, almost all the functions of administering a particular insurance program are delegated by a county mutual to its appointed MGA. The MGA conducts the majority of the business of the insurance program and is granted broad authority under the parties' MGA agreement to act on behalf of the insurance carrier. Among other functions, the MGA accepts insurance applications, underwrites applications, issues policies, collects premiums, pays commissions to retail agents, and adjusts and pays claims. Often, all or part of the obligations the MGA owes to the county mutual are supported by some form of guaranty agreement. Unlike the county mutual's compensation that is set out in the MGA agreement, the MGA's compensation is delineated in the reinsurance agreement between the county mutual and its reinsurer or reinsurers.

III. HOW TEXAS COURTS SHOULD CONSTRUE NON-STANDARD POLICIES[6]

Under Texas law, the interpretation of insurance contracts is governed by the same rules of construction applicable to other contracts.[7] The rule followed by Texas courts today appeared for the first time in its present form in *Hall v. Mutual Benefit Health & Accident Ass'n*,[8] This case involved an air travel accident policy and raised the issue of the construction to be given to the term "powered aircraft." The court there said that, "The terms of an insurance policy must be interpreted in light of common sense. Notwithstanding the rule that contracts of insurance are to be strictly construed in favor of the insured, it is well settled that the insurance

[5] *See* TEX. INS. CODE ANN. § 912.002 (West 2009).

[6] Portions of this section are taken from Rules of Interpretation and Construction of Insurance Policies, R. Brent Cooper, Dottie Sheffield, and Katie McClelland, State Bar of Texas: 4th Annual Advanced Insurance Law Seminar, March 2007.

[7] *Massey and Fire Insurance Co. v. CBI Industries, Inc.*, 907 S.W.2d 517, 520 (Tex. 1995) ("insurance policies are controlled by Rules of Interpretation and Construction which are applicable to contracts generally."); *Accord, e.g., American Manufacturers Mutual Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex. 2003) ("we interpret insurance policies in Texas according to the rules of contract construction."); *Progressive Cty. Mut. Ins. Co. v. Sink*, 107 S.W.3d 547, 551 (Tex. 2003) ("It is well settled that the general rules of contract construction apply to the interpretation of insurance contracts."); *Texas Farmers Ins. Co. v. Murphy*, 996 S.W.2d 873, 879 (Tex. 1999) ("In Texas, insurance contract interpretation is governed by general contract interpretation rules."); *Balandran v. Safeco Ins. Co. Of Am.*, 972 S.W.2d 738, 740-41 (Tex. 1998) ("Insurance contracts are subject to the same rules of construction as other contracts."); *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133 (Tex. 1994) ("Interpretation of insurance contracts in Texas is governed by the same rules as interpretation of other contracts."); *Nat'l Union Fire Ins. Co. v. Hudson Energy* Co., 811 S.W.2d 552, 555 (Tex. 1991) ("Generally, a contract of insurance is subject to the same rules of construction as other contracts."); *Western Reserve Life Ins. Co. v. Meadows*, 152 Tex. 559, 261 S.W.2d 554, 557 (1953) ("It's the settled law in this state that contracts of insurance and their construction are governed by the same rules as other contracts, and that terms used in them are to be given their plain, ordinary and generally accepted meaning unless the instrument itself shows them to have been used in a technical or different sense."); *Lennar Corp. v. Great American Ins. Co.*, 2005 WL 1324833 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *see Grimes Constr. Inc. v. Great American Lloyds Ins. Co.*, 188 S.W.3d 805 (Tex. 2006).

[8] *Hall v. Mutual Benefit Health & Accident Ass'n*, 220 S.W.2d 934, 936 (Tex. Civ. App.–Amarillo 1949, writ ref'd)

contracts, in common with other contracts, are to be construed according to the sense and meaning of the terms used by the parties. If clear and unambiguous and free from fraud, accident, or mistake, it is conclusively presumed that the parties intended to give the terms used their plain, ordinary and accepted meaning."[9]

Within a few years, this language had been adopted by the Texas Supreme Court in *Aetna Life Ins. Co. v. Reed*.[10] This case involved the construction of a life insurance policy. The court there held that, "we think the intent of the parties and the use of the language is unmistakable, therefore, but we cannot give it an opposite meaning under any theory of ambiguity.[11]

A year later, the Supreme Court once again reaffirmed this position in *Western Life Ins. Co. v. Meadow*.[12] This case involved the construction of the term "war" as used in a life insurance policy. The court there held that, "it is well settled law in this state that contracts of insurance in their construction are governed by the same rules as other contracts, and that the terms used in them are to be given their plain, ordinary and generally accepted meanings unless the instrument itself shows them to have been used in a technical or different sense."[13] Since this decision, the Texas Supreme Court has adhered to this rule, refusing invitations to move over to the "legal functionalism" approach. Most of the rules of interpretation and construction followed by Texas courts derive their source from the rules set forth in the *Hall* case. However, the rules that have been adopted in Texas since *Hall* are not without certain order. The ordering of the application of these rules has been addressed by our supreme court on more than one occasion.

A. The First Step: The Plain Meaning Rule

The first step in construing insurance policies is to start with the plain meaning rule. Under the plain meaning rule, the court is to apply, only with certain exceptions, the plain meanings of the words used in the specific provisions. If after the application of the plain meaning of the policy language there can be given a specific or definite legal meaning or interpretation, then the provision is unambiguous and the court will interpret it as a matter of law.[14]

First, the person interpreting the policy must read all parts of the contract together.[15] Under this rule, a court may not focus on just one part of the policy and ignore other portions. To do this would defeat the intent of the parties by including all provisions of the policy in the contract.

Under this rule, the court really must view all portions of the policy, but when dealing with a specific portion of a policy, must strive to give meaning to every sentence, clause, and word to avoid rendering any portion inoperative.[16]

[9] *Id.* (Citations omitted).

[10] 151 Tex. 396, 251 S.W.2d 150 (Tex. 1952).

[11] *See Hall v. Mutual Benefit Health & Accident Ass'n*, Tex. Civ. App., 220 S.W.2d 934 (1949), error refused, for an admirable statement of the rules of construction applicable here.

[12] 152 Tex. 559, 261 S.W.2d 554 (Tex. 1953).

[13] *Id.* at 564. (Citing *Hall v. Mutual Benefit Health & Accident Ass'n*, Tex. Civ. App., 220 S.W.2d 934, 936, application for writ of error refused.")

[14] *Texas Farm Bureau Mut. Ins. Co. v. Sturrock*, 146 S.W.2d 123, 126 (Tex. 2004); *see Grimes Constr. Inc. v. Great American Lloyds Ins. Co.*, 188 S.W.3d 805 (Tex. 2006).

[15] *Am. Manufacturers Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex. 2003) ("When construing the policy's language, we must give effect to all contractual provisions so that none will be rendered meaningless."); *Progressive Mut. Ins. Co. v. Sink*, 107 S.W.3d 547, 551 (Tex. 2003) ("In general, a court construing a contract 'must strive to give effect to the written expression of the parties' intent' by 'reading all parts of the contract together.'"); *Tex. Farmers Ins. Co. v. Murphy*, 996 S.W.2d 873, 879 (Tex. 1999) ("We generally "strive to give meaning to every sentence, clause, and word to avoid rendering any portion inoperative."); *Balandran v. Safeco Ins. Co. of Am.*, 972 S.W.2d 738, 741 (Tex. 1998) ("We must read all parts of the contract together."); *State Farm Life Ins. Co. v. Beastin*, 907 S.W.2d 430, 433 (Tex. 1995) ("To do so, they must read all parts of a contract together."); *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133 (Tex. 1994) ("This court is bound to read all parts of a contract together to ascertain the agreement of the parties.").

[16] *Tex. Farmers Ins. Co. v. Murphy*, 996 S.W.2d 873, 879 (Tex. 1999) ("We generally 'strive to give

Under this rule, when dealing with a specific section of the policy, the court must give meaning not only to every sentence, but to every word in order to see that the intent of the parties, as reflected in the written instrument, is expressed in the construction given by the court.

What if there are two meanings for a word? The first rule is the "definition" rule. Where the policy, by its own terms, defines a term, those definitions control.[17] Where the contract contains no definition, a different rule applies. Where the policy does not define a term, then the court will look for the ordinary, everyday meaning of the words to the general public dictionary.[18] The court is also authorized to depart from the ordinary and accepted meaning to contract terms if the policy shows that the words were meant in a technical or different sense.[19]

If after applying the rules regarding the meaning of words in reviewing the policy in its entirety the parties intent is clearly expressed by the written instrument, the interpretation of the policy stops at this point in time.

B. The Second Step: If the Contract Is Ambiguous, Question of Law

If a contract as written "can be given a definite or certain legal meaning," then it is unambiguous as a matter of law.[20] The remaining question then presented is what is a "definite or certain" legal meaning. What is "definite or certain" to one person may not be "definite or certain" to another. However, where the written document as a whole indicates the parties intended a specific meaning, then the contract is "definite or certain." In addition, Texas courts have specifically limited what can be done by a party to create ambiguity.

Texas courts are quite clear that a court may not consider parol evidence in order to create an ambiguity. If a policy is unambiguous, the court cannot resort to the various rules of construction.[21] An ambiguity does not arise merely because the parties offer differing interpretations of the policy language.[22] The reason for this is that in most, if not every case, the insured and the insurer are likely to take conflicting views of coverage.

Without question, the issue of whether or not a contract is ambiguous is a question of law for the court.[23] Texas courts have been quite consistent with what test is to be applied to determine whether a policy is ambiguous. A policy will be deemed to be ambiguous only if

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meaning to every sentence, clause and word to avoid rendering any portion inoperative.'");*Balandran v. Safeco Ins. Co. of Am.*, 972 S.W.2d 738, 741 (Tex. 1998) ("Striving to give meaning to every sentence, clause, and word to avoid rendering any portion inoperative."); *see United Services Automobile Ass'n v. Miles*, 139 Tex. 138, 161 S.W.2d 1048, 1050 (1942).

[17]*Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 216 (Tex. 2003); Ramsey v. Maryland Am. Gen'l Ins. Co., 533 S.W.2d 344, 346 (Tex. 1976); *Trinity Universal Ins. Co. v. Cowan*, 945 S.W.2d 819, 823 (Tex. 1997) ("And when terms are defined in an insurance policy, those definitions control.").

[18]*Progressive County. Mut. Ins. Co. v. Sink*, 107 S.W.3d 547, 551 (Tex. 2003) ("We look to the term in the ordinary, everyday meaning of the words to the general public."); *United States Ins. Co. of Waco v. Boyer*, 153 Tex. 415, 269 S.W.2d 340, 341 (1954) (In construing such policies, we look to determine the ordinary, everyday meaning of the words to the general public.)

[19]*American States Ins. Co. v. Hanson Industries*, 873 F. Supp. 17, 22 (S. D. Tex 1995); *Security Casualty Co. v. Johnson*, 584 S.W.2d 703, 704 (Tex. 1979).

[20]*Progressive Mutual Ins. Co. v. Sink*, 107 S.W.3d 547, 551 (Tex. 2003); *Grain Dealers Mut. Ins. Co. v. McKee*, 943 S.W.2d 455, 458 (Tex. 1997); *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).

[21]*Barnett v. Aetna Life Ins. Co.*, 723 S.W.2d 663, 665 (Tex. 1987) ("However, if the insurance contract is expressed in plain and unambiguous language, a court cannot resort to the various rules of construction.").

[22]*Texas Farm Bureau Mut. Ins. Co. v. Sturrock*, 146 S.W.3d 123, 126 (Tex. 2004); *Kelley-Coppedge, Inc. v. Highlands Ins. Co.*, 980 S.W.2d 462, 465 (Tex. 1998); *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 134 (Tex. 1994).

[23]*Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. CBI Industries, Inc.*, 907 S.W.2d 517, 520 (Tex. 1995); *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983); *R & P Enterprises v. La Guarta, Gavrel & Kirk, Inc.*, 596 S.W.2d 517, 518 (Tex. 1980).

the contract is susceptible to two or more reasonable interpretations.[24]

C. Step Three: Application of the Rules of Construction

Once it is determined that there are two interpretations, the first step in determining whether both interpretations are reasonable is to apply the rules of construction.

Under Texas law, an endorsement cannot be read apart from the main policy and all the provisions will supersede previous terms to the extent they are truly in conflict.[25] It is only in cases of conflict that endorsement to a policy prevails over an inconsistent printed provision of the policy.

In addition, general terms will be controlled by specific provisions. Where there is a special provision of the policy, as a special provision it will control over more general provisions contained within the text of the policy.[26]

If after the application of the rules of construction there is only one reasonable interpretation, the inquiry stops at this point. The party whose interpretation is consistent with the rules of construction is entitled to have his or her interpretation adopted. However, if both interpretations comply with the rule of construction, the parties must progress to Step #4.

D. Step Four: Use of Extrinsic Evidence

If there are two interpretations which comply with the rules of construction, the court must proceed to the next step, which is the use of extrinsic evidence. Texas courts have long recognized the use of extrinsic evidence to resolve an ambiguity.[27]

Texas law has consistently held to the proposition that courts cannot use extrinsic evidence to prove the existence of, or create an ambiguity.[28] Therefore, extrinsic evidence,

[24] *Texas Farm Bureau Mut. Ins. Co. v. Sturrock*, 146 S.W.2d 123, 126 (Tex. 2004) ("An ambiguity exists only if the contract is susceptible to two or more reasonable interpretations."); *American Manufacturers Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex. 2003). ("An ambiguity exists only if the contract language is susceptible to two or more reasonable interpretations."); *Grain Dealers Mut. Ins. Co. v. McKee*, 943 S.W.2d 455, 458 (Tex. 1997) ("Conversely, if an insurance contract is subject to more than one reasonable interpretation, the contract is ambiguous."); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. CBI Industries, Inc.*, 907 S.W.2d 517, 520 (Tex. 1995) ("If, however, the language of the policy or contract is subject to two or more reasonable interpretations, it is ambiguous."); *State Farm Fire & Casualty Co. v. Reed*, 873 S.W.2d 698, 699 (Tex. 1993) ("However, if the contract is susceptible to more than one reasonable interpretation, we must resolve the uncertainty by adopting the construction most favorable to the insured."); *Barnett v. Aetna Life Ins. Co.*, 723 S.W.2d 663, 665 (Tex. 1987) ("It has long been the law in this state that when language in a policy is susceptible to more than one reasonable construction, it is patently ambiguous."); *Blaylock v. American Guarantee Bank Liability Ins. Co.*, 632 S.W.2d 719, 721 (Tex. 1982) ("However, when the language used is subject to two or more reasonable interpretations, construction which supports coverage will be adopted."); *Glover v. Nat'l Ins. Underwriters*, 545 S.W.2d 755 (Tex. 1977).

[25] *Primrose Operating Co. v. Nat'l American Ins. Co.*, 382 F.3d 546 (5th Cir. 2004);*Westchester Fire Ins. Co. v. Heddington Ins.*, 84 F.3d 432 (5th Cir. 1996); *U. E. Texas One-Barrington v. General Star Indem. Co.*, 243 F.Supp.2d 652, 661 (W.D. Tex. 2001); *Mace Operating Co. v. California Union Ins. Co.*, 986 S.W.2d 749, 754 (Tex.App.–Dallas 1999).

[26] *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d at 133-46 (Tex. 1994); *Davis v. Texas Life Ins. Co.;* 426 S.W.2d 260 (Tex.App.–Waco 1968, writ ref'd n.r.e.); *Kuntz v. Spence*, 67 S.W.2d 254 (Tex. 1934).

[27] *United Founders Life Ins. Co. v. Carey*, 363 S.W.2d 236, 241-43 (Tex. 1962).

[28] *Kelley-Coppedge, Inc. v. Highlands Ins. Co.*, 980 S.W.2d 463, 464 (Tex. 1998) ("Parol evidence is not admissible for the purposes of creating an ambiguity."); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. C.B.I. Industries, Inc.*, 907 S.W.2d 517, 520 (Tex. 1994) ("Parol evidence is not admissible for the purpose of creating an ambiguity."); *see also Universal C.I.T. Credit Corp. v. Daniel*, 243 S.W.2d 154, 157 (Tex. 1951) ("In the latter event the contract will be enforced as written, parol evidence will not be received for the purpose of creating an ambiguity or to get the contract meaning different from that which its language imports."); *Lewis v. East Texas Finance Co.*, 136 Tex. 149, 146 S.W.2d 977, 980 (1941).

including parol evidence, is not admissible for the purposes of creating an ambiguity, but only becomes admissible once there has been a determination by the court that an ambiguity exists.

If after extrinsic evidence has been applied there is only one interpretation which is still reasonable, the inquiry ends. The court is charged with construing insurance policy to conform it to the intent of the parties. This concept goes as far back as 1894 in *East Texas Fire Ins. Co. v. Kempner*.[29] If, however, the use of extrinsic evidence results in two reasonable interpretations, the one must go on to the fifth and final step of the algorithm.

E. Step Five: Contra Proferentem

The rule of *contra proferentem* is that any ambiguous provision should be construed against the person who drafted the document. The rule of *contra proferentem* under the Texas law should be applied as a rule of last resort. It should only be applied after application of the rules of construction and after use of extrinsic evidence, there remains two reasonable interpretations. If application of these rules, only one interpretation is reasonable, the rule does not apply.

It has been a well settled rule in this state that policies of insurance will be interpreted and construed liberally in favor of the insured and strictly against the insurer, and especially so when dealing with exceptions and words of limitation.[30]

Further, the Texas courts adopt the construction of an exclusionary clause urged by the insured as long as that construction is not itself unreasonable even if the construction urged by the insurer appears to be more reasonable or a more accurate reflection of the parties' intent.[31]

Courts must give full effect to the written expression of the parties' intent. If the courts are unclear on the parties' intent, they only need to look the Insurance Department's drafting history, regulatory history, and relevant actions of the State Board of Insurance to determine the parties' intent.[32]

These rules of construction are instructive as to how Texas courts should construe and interpret nonstandard auto policy language.

IV. NON-STANDARD TDI APPROVED LANGUAGE

One personal auto policy approved by the TDI, had several features which are more restrictive than the Texas standard form. For example:

The personal auto policy excludes liability and physical damage coverage while an insured is employed in the delivery of newspapers or magazines, food or any products for the purpose of compensation. A teenager delivering pizza as

[29] 87 Tex. 229, 27 S.W. 122, 123 (1894) (The court found the language in the policy indicated that "the intention was to exclude judicial construction by making the terms unambiguous, and the court must enforce the contract as made.").

[30] *Canutillo Indep. Sch. Dist. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.,* 99 F.3d 695, 701 (5th Cir. 1996); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Hudson Energy Co., Inc.*, 811 S.W.2d 552 (Tex. 1991); *Ranger Ins. Co. v. Bowie*, 574 S.W.2d 540 (Tex. 1978); *Glover v. National Ins. Underwriters*, 545 S.W.2d 755 (Tex. 1977); *Ramsay v. Maryland American General Ins. Co.*, 533 S.W.2d 344 (Tex. 1976); *Gulf Ins. Co. v. Parker Products, Inc.*, 498 S.W.2d 676 (Tex. 1973); *Continental Cas. Co. v. Warren*, 254 S.W.2d 762 (Tex. 1953); *Providence Washington Ins. Co. v. Profitt et al.*, 239 S.W.2d 379 (Tex. 1951); *Brown v. Palatine*, 35 S.W. 1060,1061 (1896); *American Fidelity & Casualty Co., Inc. v. Williams*, 34 S.W.2d 396, 402 (Tex. App.--Amarillo 1930, writ dism.); *Norwood v. Washington Fidelity Nat. Ins. Co.*, 16 S.W.2d 842 (Tex. App.--Beaumont 1929, no writ history).

[31] *Utica Nat. Ins. Co of Texas v. American Indem. Co.*,141 S.W.3d 198 (Tex 2004); *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Hudson Energy Co.*, Inc., 811 S.W.2d 552 (Tex. 1991); *Barnett v. Aetna Life Ins. Co.*, 723 SW2d 663 (Tex. 1987); *Glover*, 545 S.W.2d at 761; *Insurance Co. of North America v. Cash*, 475 S.W.2d 912 (Tex. 1972); *Continental Cas. Co. v. Warren*, 254 S.W.2d 762 (Tex. 1953).

[32] *Union Pacific Resources Co. v. Aetna Casualty and Surety Co.*, 894 S.W.2d 401 (Tex. App.--Fort Worth 1994, writ denied).

contract labor would be an uninsured motorist if he/she had a wreck under this policy.

The policy also excludes punitive or exemplary damages. The Texas standard policy does not exclude coverage for these types of damages.

The policy provides for depreciation of a loss settlement after a partial loss. If an older vehicle needs to be repainted after hail damage, the insurer will only pay a depreciated percentage of the actual cost. A Texas standard policy will pay the full cost to re-paint and is not allowed to depreciate costs to repair or replace, unless the auto is totaled.

V. LITIGATING NON-STANDARD POLICY LANGUAGE

Another personal auto policy approved by TDI has additional restrictions that have been upheld by Texas courts. The policy provided additional restrictions for Coverage D, Damage to Your Auto. The policy provided that "For coverage to exist under Part D – Coverage for Damage to Your Auto, at the time of the loss the covered auto must be operated by or in the control of an authorized driver." The definition of "authorized driver" was revised to include the named insured and any other person listed in the Declarations or added by endorsement during the policy term prior to a loss.

The non-standard policy provided that if a driver was not the named insured or a person listed on the Declarations page or added by endorsement, they did not meet the definition of "authorized driver" and there was no coverage afforded under Part D – Coverage for Damage to Your Auto. Under the facts, a non-listed, non-insured driver was operating the vehicle at the time of the accident. However, the twist on this case was that a Loss Payee was making a claim for damages to the insured auto, not the insured.

The insurer moved for summary judgment and argued that Texas law provides that a loss payee has no greater rights than that of the insured, with the exception of fraudulent acts or omissions of the insured.[33] Therefore, the loss payee had no greater rights than the insured. Because no coverage under Part D – Coverage for Damage to Your Auto can be afforded to the insured because the insured vehicle was operated by an unauthorized driver at the time of the auto accident, no coverage could be afforded to the loss payee. Thus, the insurer argued it had no duty to tender comprehensive and/or collision coverage for the auto accident. A Texas court agreed with the insurer and granted summary judgment.

Another provision challenged is the acquisition of a new car and coverage under the non-standard policy. The standard policy provides coverage for newly acquired vehicles for 30 days from purchase. Newly approved language from TDI allows a carrier to limit this to 10 days from purchase.

The personal auto policy excludes coverage when the insured becomes the owner of a newly acquired auto if an auto and coverage is requested by the insured for the newly acquired auto within 10 days after the insured becomes the owner.

VI. CONCLUSION

Because of the changes in standard language, Texas non-standard insurers have the opportunity to have their policies construed under the Texas laws of construction of contracts.

[33] *Old Am. Mut. Fire Ins. Co. v. Gulf States Fin. Co.*, 73 S.W.3d 394, 395 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).