

IN THE MATTER OF ARBITRATION:

LANCE ARMSTRONG AND  
TAILWIND SPORTS INC.

v.

SCA PROMOTIONS, INC. AND  
HAMMAN INSURANCE SERVICES, INC.

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BEFORE THE HONORABLE  
RICHARD FAULKNER, RICHARD  
CHERNICK AND TED LYON,  
ARBITRATORS

PLAINTIFFS' DESIGNATION OF EXPERT WITNESSES

Plaintiffs, Lance Armstrong and Tailwind Sports, Inc., designate the following expert witness relating to insurance issues pursuant to the agreement of the parties:

Mr. Joe Longley  
The Law Offices of Joe K. Longley  
1609 Shoal Creek Blvd., Ste. 100  
Austin, Texas 78701

Mr. Longley is an attorney duly licensed to practice law in the State of Texas and has written and published extensively on the business of insurance and insurance bad faith. Mr. Longley's *curriculum vitae* is attached hereto as Exhibit "A". Mr. Longley is expected to provide his opinion regarding insurance and insurance bad faith issues as follows:

1. The Contingent Prize Contract #31122 issued by SCA Promotions, Inc. to Tailwind Sports Corp., f/k/a Disson Furst & Partners, constitutes the business of insurance under Texas law, regardless of the "business contract" nomenclature utilized by SCA to describe the agreement.
2. The risk or contingency against which SCA indemnified Tailwind was Tailwind's potential liability to Lance Armstrong for bonuses due



Armstrong from Tailwind for being the official winner of the 2001, 2002, 2003 and 2004 Tour de France ("TDF") bicycle events. The event(s) triggering SCA's obligation to pay under the subject agreement were the declaration by the governing body of the TDF of Armstrong as the "official winner" of the TDF events identified in the agreement.

3. Tailwind's liability to Armstrong is determined by its contract with Armstrong and Tailwind became liable to Armstrong upon his sixth consecutive victory in the TDF in July, 2004. Tailwind's liability is clear and unambiguous; consequently, SCA's liability is likewise clear and unambiguous.
4. SCA had no reasonable basis for either denying or delaying the claim of Tailwind for the \$5,000,000.00 due thirty business days subsequent to the conclusion of the 2004 TDF.
5. SCA contracted directly with Swiss Re for the reinsurance of 97.5% of the \$1,500,000 coverage due in 2002 and the \$3,000,000 coverage due in 2003. SCA's direct negotiation and acquisition of reinsurance from Swiss Re by SCA constituted the "business of insurance" under Texas law despite the purported utilization of AIG (Lexington Insurance) as a fronting carrier.
6. SCA delayed and denied Tailwind's claim unreasonably and engaged in bad faith in the investigation and evaluation of Tailwind's claim for the \$5,000,000 due in 2004; that bad faith was knowing and intentional and

subjects SCA to damages of 18% per annum as well as multiple damages in the amount of \$15,000,000.

7. SCA asserts that Contingent Prize Contract and the Addendum thereto are not "insurance"; those agreements are clearly the "business of insurance", however. Even if one were to conclude that the agreement was not the "business of insurance", the representations of "coverage" and the fundamental nature of indemnifying Tailwind's exposure, SCA would be liable for false, deceptive and misleading conduct violating the provisions of Sec. 17.46 of the DTPA and the measure of damages would be the same.
8. SCA never had any contact with Tailwind or Mr. Armstrong and Mr. Robert Hamman's testimony confirms that SCA did not rely upon any concealment or misrepresentation of Tailwind. In any event, SCA was required by Art. 21.17 of the Texas Insurance Code to notify Tailwind within ninety days from September 2, 2004 of the specific misrepresentations made by Tailwind; otherwise that defense is waived by SCA as a matter of law.
9. SCA is not entitled to the documents, information and materials demanded in the correspondence of Robert Hamman dated September 2, 2004, in order to process Tailwind's claim. To the contrary, SCA is not entitled to any documents not identified in the insurance contract between SCA and Tailwind.

10. The policies issued by Chubb and Lloyd's of London provide the same indemnity as the SCA contract and the availability of such Prize Reimbursement coverage is significant as Tailwind would have, had it been informed by SCA that Tailwind did not have insurance coverage, secured such coverage from alternate sources.

Respectfully submitted,

HERMAN, HOWRY & BREEN, L.L.P.

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State Bar No. 09513700  
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(512) 474-7300  
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ATTORNEYS FOR CLAIMANTS  
LANCE ARMSTRONG AND  
TAILWIND SPORTS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on counsel listed below via email and facsimile on the 9<sup>th</sup> day of September, 2005.

Michael P. Lynn/Jeff Tillotson.  
Lynn Tillotson & Pinker, L.L.P.  
750 N. St. Paul Street  
Suite 1400  
Dallas, Texas 75201

Respectfully submitted,

**HERMAN, HOWRY & BREEN, L.L.P.**

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**ATTORNEYS FOR CLAIMANTS  
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I hereby certify that a true and correct copy of the foregoing document has been served on counsel listed below via email and facsimile on the 9<sup>th</sup> day of September, 2005.

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Born West Plains, Missouri, February 10, 1943

Admitted to Bar 1969, Texas

Subsequent Admissions:

1970, U.S. Court of Appeals, Fifth and Eleventh Circuits

1971, U.S. District Court, Northern, Western, and Southern Districts of Texas

1990, U.S. Supreme Court

**PROFESSIONAL HONORS**

2000—Named to *Texas Lawyer's* distinguished list of "100 Legal Legends" for his impact on Texas law protecting consumers

2002—Name by *Texas Lawyer's Go-To Guide* as the Number One Go-to-Lawyer for Insurance Law in the State of Texas

2003—Selected as a Texas Super Lawyer by *Texas Monthly* magazine in the field of class action/mass torts

2004—Selected as a Texas Super Lawyer by *Texas Monthly* magazine in the field of insurance coverage

2005—Selected as a Texas Super Lawyer by *Texas Monthly* magazine in the field of insurance coverage

**EDUCATION**

BBA - University of Texas, 1966

JD - University of Texas, Austin, School of Law, 1969

- 1968-1969 Member, Moot Court Board
- 1968-1969 Member, Legal Research Board

**GOVERNMENTAL EXPERIENCE (PRE-LAW)**

1963 Clerk—Base Rate Section—Texas State Board of Insurance

1963 Asst. Sergeant-at-Arms; Texas State Senate (Lt. Governor Preston Smith)

1964-1969 Office Assistant—Governor's Office (Governor John Connally)

**PROFESSIONAL EXPERIENCE AND ACTIVITIES**

1969-1970 Assistant Attorney General of Texas—Antitrust and Consumer Protection Division (Attorney General Crawford C. Martin)

1971-1972 Associate Attorney; Edwards & DeAnda, Corpus Christi, Texas

1972-1973 Solo practitioner; Law Offices of Joe K. Longley, Austin, Texas

- 1973-1975 Chief, Antitrust & Consumer Protection Division (Attorney General John L. Hill)
- 1975-1979 Solo practitioner; Law Offices of Joe K. Longley, Austin, Texas
- 1977-1978 Chairman - Consumer Law Section State Bar of Texas
- 1976-1979 Director, State Bar of Texas-District 9 (Travis County)
- 1976-1979 Member Ex-officio-District 9 Grievance Committee
- 1979-2004 Partner, Longley & Maxwell, LLP, Austin, Texas
- 1988-1989 Public Member, Joint Legislative Committee to Study the Deceptive Trade Practices Act
- 1990-2004 Director, Texas Law Institute, Inc.
- Spring 2001 Adjunct Professor, University of Texas School of Law (Insurance law)

**GENERAL LEGISLATIVE EXPERIENCE**

- 1973 - Present Principal draftsman of the Texas Deceptive Trade Practices Consumer Protection Act (DTPA); and amendments to Article 21.21, TEX. INS. CODE; assisted in drafting the Texas Home Solicitation Transaction Act; assisted in drafting the Texas Debt Collection Practices Act; assisted in drafting the Tenant's Security Deposit Act; Assisted in drafting all amendments to the DTPA and Article 21.21, TEX. INS. CODE
- 1991 Co-draftsman -H.B.2 - Insurance Reform Amendments.
- 1993 Co-draftsman, Insurance Code Amendments HB 1461; Real Estate Disclosure, HB 1081; Security Standards, HB 1368; Swimming Pool Standards, SB 140
- 1995 Member of Texas Trial Lawyers Negotiating Team 74th Legislative Session Consumer Protection Act and Insurance Code
- 2001 Member of Texas Trial Lawyers Negotiating Team 77th Legislative Session Consumer Protection and Insurance

**APPROVED AS CLASS COUNSEL**

- 2003 Cause No. GN-00-3014; *Betty J. Wendland, on Behalf of Herself and All Others Similarly Situated, et al vs. Insurance of America Agency, Inc., et al.*, in the 201<sup>st</sup> District Court of Travis County, Texas
- 2001 Cause No. 00-00705, *Ella Mae Rowe, Individually and on Behalf of All Others Similarly Situated vs. National Western Life Ins. Co.*, in the 345<sup>th</sup> Judicial District Court of Travis County, Texas
- 2000 Cause No. 32,404-A ; *Mike Davis, et al. vs. Monsanto Company, Delta and Pine Land Company, and D & M Partnership, Defendants*; in the 82<sup>nd</sup> Judicial District Court of Falls County, Texas
- 1999 Cause No. 98-00886; *Shelly E. Stromboe, D.D.S., et al., on Behalf of Themselves and all Others Similarly Situated, vs. Henry Schein, Inc., et al.*; in the 345<sup>th</sup> District Court of Travis County, Texas



## PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

American Bar Association (Texas State Coordinator for Consumer Affairs Committee, Young Lawyers Section, 1970-1971) (Chairman, Consumer Rights Committee, Litigation Section, 1975)

American Board of Trial Advocates (Life Fellow (2001) and Advocate Member, 1996—)

Federal Bar Association

State Bar of Texas (Member, Board of Directors, 1976-1979) (Chairman, Consumer Law Section, 1977)

Texas Trial Lawyers Association (30-year member)

The Association of Trial Lawyers of America (Stalwart 2001)

The Texas Bar Foundation (Life Member)

Keeton Fellow (University of Texas School of Law)

The Dean's Roundtable (University of Texas School of Law—2000)

William Wayne Justice Fund for Public Service (Steering Committee, University of Texas School of Law, 2003--present)

## LAW RELATED PUBLICATIONS

### BOOKS

Co-Author, (unpublished) *Texas Insurance Law: Rights and Remedies*

Co-Author, *Texas Consumer Litigation* (1978) and *Texas Consumer Litigation 2d* (1993)

### PERIODICALS

Editor, *Texas Consumer Law Reporter* 1981-2000

Editor, *Texas Insurance Law Online* 2001-2003

### LAW JOURNALS AND LAW REVIEWS

*Discovery and Sanctions for Discovery Abuse*, 18 ST. MARY'S L.J. 163, 1986

*Consumerism Comes to Texas*, TEXAS TRIAL LAWYERS FORUM (July-Sept., 1973), pg. 23

### CONFERENCES AND SEMINARS

*How to Rebake the Bad Faith Cake with the Reinsurer when the Primary Goes Into Liquidation*, BAD FAITH INSURANCE LITIGATION GROUP CLOSED MEETING, ATLA MID-YEAR CONVENTION (2002)

*Jury Selection in Insurance Cases: Making Careful and Correct Selections*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 10<sup>TH</sup> ANNUAL ULTIMATE INSURANCE SEMINAR (2001)

*Legislative Update 1999: Insurance*, STATE BAR OF TEX. PROF. DEV. PROGRAM & STATE BAR COLLEGE "SUMMER SCHOOL" (1999)

*Claims Under Long Term Disability Insurance Policies – Special Considerations*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 7<sup>TH</sup> ANNUAL ULTIMATE INSURANCE SEMINAR (1998)

*Insurance Contracts/Bad Faith*, STATE BAR OF TEX. PROF. DEV. PROGRAM, ADVANCED PERSONAL INJURY LAW (1998)

*Legislative Update: DTPA & Insurance Code*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 10<sup>TH</sup> ANNUAL ADVANCED DTPA/CONSUMER/INSURANCE LAW COURSE (1997)

*Overview of Plaintiffs' Perspective in Insurance Litigation*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 5<sup>TH</sup> ANNUAL ULTIMATE INSURANCE SEMINAR (1996)

*Closing Argument: The Net Worth of An Insurance Company*, UNIV. OF TEX., INSURANCE LAW INSTITUTE (1996)

*Handling an Insurance Bad Faith Case after Watson and Moriel*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 4<sup>TH</sup> ANNUAL ULTIMATE INSURANCE SEMINAR (1995)

*DTPA Update*, TEXAS TRIAL LAWYERS ASSOCIATION, ADVANCED PERSONAL INJURY SEMINAR (1995)

*Legislative Update*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 8<sup>TH</sup> ANNUAL ADVANCED DTPA/CONSUMER/INSURANCE LAW COURSE (1995); COMPREHENSIVE CONSUMER LAW (1995); CORPUS CHRISTI BAR ASSOCIATION (1995)

*When the Good Claim Goes Bad: Handling ERISA and Insolvency Problems*, STATE BAR OF TEX. PROF. DEV. PROGRAM, SUING, DEFENDING AND NEGOTIATING WITH INSURANCE COMPANIES (1994)

*The Future Decisions of the Texas Supreme Court in the Insurance Area*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 3<sup>RD</sup> ANNUAL ULTIMATE INSURANCE SEMINAR (1994)

*DTPA Update*, TEXAS TRIAL LAWYERS ASSOCIATION, ADVANCED PERSONAL INJURY COURSE, (1994)

*Mental Anguish Damages: Point-Counterpoint Plaintiff's Perspective: "Heck Yes"*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 7<sup>TH</sup> ANNUAL ADVANCED DTPA/INSURANCE/CONSUMER LAW COURSE (1994)

*Mental Anguish Damages Under the DTPA*, TEXAS TRIAL LAWYERS ASSOCIATION, ADVANCED TRIAL TACTICS SEMINAR (1994)

*Impact of Texas Supreme Court Decisions Affecting Insurance*, TEXAS ASSOCIATION OF INSURANCE AGENTS, ANNUAL TEXAS COMPANY MANAGER CONFERENCE (1994)

*Plaintiff's Perspective, Arguing Punitive and Treble and Other Extracontractual Damages or [Answering the Question of Who has a Heart Black as Three Feet Down a Wolf's Gullet]*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 2<sup>ND</sup> ANNUAL ULTIMATE INSURANCE SEMINAR (1993)

*Current Issues Under the DTPA and Insurance Code*, TEXAS TRIAL LAWYERS ASSOCIATION, ADVANCED PERSONAL INJURY LAW COURSE (1993)

*Legislative Update*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 6<sup>TH</sup> ANNUAL ADVANCED DTPA/INSURANCE/CONSUMER LAW COURSE (1993)

*DTPA, Texas Insurance Law and Other Consumer Issues*, MEXICAN/AMERICAN BAR ASSOCIATION OF TEXAS (1993)

*Vanishing Coverage: That Was Then, This Is Now*, CAPITAL AREA TRIAL LAWYERS ASSOCIATION (1993)

*Recent Developments in Insurance Law*, LORMAN EDUCATION SERVICES (1993)

*Moderator, Panel Session Relating to Attorney's Fees*, THE TRAVIS COUNTY JUDICIARY; THE TRAVIS COUNTY BAR ASSOCIATION; THE AUSTIN YOUNG LAWYERS ASSOCIATION FOUNDATION, 2<sup>ND</sup> ANNUAL BENCH BAR CONFERENCE (1992)

*Panelist, Hopes and Concerns of the Bar*, STATE BAR OF TEX. PROF. DEV. PROGRAM, ADR INSTITUTE: HOW TO USE MEDIATORS TO GET A FAIR SETTLEMENT FOR YOUR CLIENT (1992)

*Texas 'Bad Faith' Overview - Statutory & Common Law Claims and Where the Texas Supreme Court is Going*, STATE BAR OF TEX. PROF. DEV. PROGRAM, ULTIMATE INSURANCE SEMINAR (1992) and 4<sup>TH</sup> ANNUAL DTPA CONFERENCE (1992)

*Settlement Problems and Possibilities--Credits, Indemnity and Offsets in Light of Stewart Title*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 5<sup>TH</sup> ANNUAL ADVANCED DTPA/CONSUMER LAW COURSE (1992)

*Insurance/Consumer Protection Law in Texas Update*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 10<sup>TH</sup> BI-ANNUAL INSTITUTE OF TEXAS LAW FOR MILITARY ATTORNEYS (1992)

*Insurance 'Bad Faith' and DTPA Update*, AMARILLO BAR ASSOCIATION, SPRING INSTITUTE (1992)

*Where Have We Been and What Does it Hold For the Future? A Supreme Court Review of Insurance Litigation*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 4<sup>TH</sup> ANNUAL ADVANCED DTPA/CONSUMER LAW COURSE (1991)

*Current Issues Under the DTPA and Insurance Code*, TEXAS TRIAL LAWYERS ASSOCIATION, PRACTICE POINTERS AND TRIAL TIPS (1991)

*The Duty of Good Faith and Fair Dealing - Where Do We Go From Here: Plaintiff's View*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 3<sup>RD</sup> ANNUAL ADVANCED DTPA/CONSUMER LAW COURSE (1990)

*How to Deal With Discovery Abuse*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 13<sup>TH</sup> ANNUAL ADVANCED CIVIL TRIAL COURSE (1990)

*Insurance Litigation: Statutory Remedies*, TEXAS TECH. UNIV., 3<sup>RD</sup> ANNUAL EL PASO - CONSUMER LAW INSTITUTE (1990)

*Current Developments in Statutory Causes of Action, Especially the Deceptive Trade Practices Act*, UNIV. OF TEX., 14<sup>TH</sup> ANNUAL PAGE KEETON PRODUCTS LIABILITY AND PERSONAL INJURY LAW COURSE (1990)

*Taking Stock at the DTPA Arsenal: Causes of Action Under the DTPA and Article 21.21 of the Insurance Code*, UNIV. OF TEX., 2<sup>ND</sup> ANNUAL DTPA CONFERENCE (1990)

*Litigation Under The Deceptive Trade Practices - Consumer Protection Act and Article 21.21 of the Texas Insurance Code*, STATE BAR OF TEX. MILITARY LAW SECTION (1990)

*Plaintiff's Strategies*, UNIV. OF TEX., DTPA: FROM THE BASICS TO BAD FAITH LITIGATION CONFERENCE (1989)

*Discovery in Bad Faith Cases – Plaintiff's Perspective*, STATE BAR OF TEX. PROF. DEV. PROGRAM (1989)

*Insurance Litigation: Unfair Claims Handling*, TEXAS TRIAL LAWYERS ASSOCIATION, YOUR PRACTICE...MORE PERFECT (1988)

*Insurance Litigation*, STATE BAR OF TEX. PROF. DEV. PROGRAM, CONSUMER LAW INSTITUTE (1987); *DECEPTIVE TRADE PRACTICES ACT: AN INSTITUTE SERIES* (1987)

*Discovery and Sanctions for Discovery Abuse*, SAN ANTONIO BAR ASSOCIATION (1987)

*Litigation Under the DTPA and Article 21.21 of the Texas Insurance Code*, STATE BAR OF TEX. PROF. DEV. PROGRAM, CONSUMER LAW INSTITUTE (1986)

*Application of the DTPA in Professional Liability Litigation*, STATE BAR OF TEX. PROF. DEV. PROGRAM, PROFESSIONAL LIABILITY (A PERFORMANCE ENHANCEMENT COURSE) (1986)

*Warranties*, STATE BAR OF TEX. PROF. DEV. PROGRAM, 1986 INSTITUTE AND WORKSHOPS ON CONSUMER LAW AND DEBTOR/CREDITOR ISSUES (1986)

*Litigation Under the DTPA and Article 21.21 of the Texas Insurance Code*, HOUSTON BAR ASSOCIATION (1985); STATE BAR OF TEX. MILITARY LAW SECTION (1985)

*Discovery Sanctions and In-Camera Inspections of Documents*, TEXAS TRIAL LAWYERS ASSOCIATION, MASTERS AT WORK: NEW DIMENSIONS IN TORT LITIGATION (1985)

*Business and Consumer Litigation Under the Texas Deceptive Trade Practices Act and the Texas Insurance Code*, STATE BAR OF TEX. MILITARY LAW SECTION (1984)

*Treble Damage Opportunities Under the Texas Deceptive Trade Practices Act and Insurance Code*, HOUSTON BAR ASSOCIATION (1983)

*Consumer Protection*, STATE BAR OF TEX. PROF. DEV. PROGRAM, ADVANCED CIVIL TRIAL CONFERENCE (1978, 1979, 1980)

### REPORTED CASES

#### Supreme Court of Texas

*Aetna Casualty & Surety Company v. Marshall*, 724 S.W.2d 770 (Tex. 1987)

*Allstate Ins. Co. v. Watson*, 876 S.W.2d 145 (Tex. 1994)

*Cathey v. Metropolitan Life Insurance Company*, 805 S.W.2d 387 (1991)

*Celtic Life Ins. Co. v. Coats*, 885 S.W.2d 96 (Tex. 1994)

*Centex Homes v. Buecher*, 95 S.W.3d 266, (Tex. 2003)

*Chitsey v. National Lloyds Ins. Co.*, 738 S.W.2d 641 (Tex. 1987)

*Henry S. Miller Co. v. Bynum*, 836 S.W.2d 160 (Tex. 1992)

*Henry Schein, Inc. v. Stromboe*, 102 S.W.3d 675 (Tex. 2002)

*Hurst v. Sears, Roebuck & Co.*, 647 S.W.2d 249 (Tex. 1983)

*Impson v. Structural Metals, Inc.*, 487 S.W.2d 694 (Tex. 1972)

*International Armament Corp. v. King*, 686 S.W.2d 595 (Tex. 1985)

*Mayo v. John Hancock Mut. Ins. Co.*, 711 S.W.2d 5 (Tex. 1986)

*McKinley v. Drozd*, 685 S.W.2d 7 (Tex. 1985)

*Melody Home Mfg. Co. v. Barnes*, 741 S.W.2d 349 (Tex. 1987)  
*Petroscience Corp. v. Diamond Geophysical, Inc.*, 684 S.W.2d 668 (Tex. 1984)  
*Remington Arms Co. v. Caldwell*, 850 S.W.2d 167 (Tex. 1993)  
*Remington Arms Co. v. Martinez*, 850 S.W.2d 167 (Tex. 1993)  
*Republic Ins. Co. v. Davis*, 856 S.W.2d 158 (Tex. 1993)  
*Rivas v. Liberty Mut. Ins. Co.*, 480 S.W.2d 610 (Tex. 1972)  
*Sorokolit v. Rhodes*, 889 S.W.2d 239 (Tex. 1994); [citing §2.02 Texas Consumer Litigation 2d]  
*Spencer v. Eagle Star Ins. Co. of Am.*, 876 S.W.2d 154 (Tex. 1994)  
*Springfield v. Aetna Cas. & Sur. Ins. Co.*, 620 S.W.2d 557 (Tex. 1981)  
*State Farm Life Ins. Co. v. Beaston*, 907 S.W. 430 (Tex. 1995)  
*State v. Credit Bureau of Laredo, Inc.*, 530 S.W.2d 288 (Tex. 1975)  
*Vail v. Texas Farm Bureau Mut. Ins. Co.*, 754 S.W.2d 129 (Tex. 1988)  
*Weitzel v. Barnes*, 691 S.W.2d 598 (Tex. 1985)

#### Texas Court of Appeals

*Allen v. Aetna Cas. & Sur. Co.*, 567 S.W.2d 547 (Tex.Civ.App.—Fort Worth 1978, writ ref'd n.r.e.)  
*American Gen. Fire & Cas. Co. v. Buford*, 716 S.W.2d 86 (Tex.App.—Austin 1986, writ ref'd n.r.e.)  
*Aztec Life Ins. Co. v. Dellana*, 667 S.W.2d 911 (Tex.App.—Austin 1984, no writ)  
*Beaver Exp. Serv., Inc. v. Railroad Com'n*, 727 S.W.2d 768 (Tex.App.—Austin 1987, writ denied)  
*EMC Mortgage Corp. v. Davis*, \_\_\_ S.W.3d \_\_\_ 2005 WL 1115994 (Tex.App.—Austin, 2005)  
*Engstrom v. First Nat. Bank*, 936 S.W.2d 438 (Tex.App.—Houston [14<sup>th</sup> Dist.] 1996, writ denied)  
*Enterprise-Laredo Assoc. v. Hachar's, Inc.*, 839 S.W.2d 822 (Tex.App.—San Antonio 1992, writ denied), *per curiam*, 843 S.W.2d 476 (Tex. 1992); [citing §3.05.011 Texas Consumer Litigation 2d]  
*Fortner v. Fannin Bank*, 634 S.W.2d 74 (Tex.App.—Austin 1982, no writ)  
*Fortner v. Merrill Lynch Pierce, Fenner & Smith, Inc.*, 687 S.W.2d 8 (Tex.App.—Dallas 1984, writ ref'd n.r.e.)  
*Gibbs v. Main Bank*, 666 S.W.2d 554 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1984, no writ)  
*Grainger v. Western Cas. Life Ins. Co.*, 930 S.W.2d 609 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1996, writ denied)  
*Group Hosp. Serv., Inc. v. Dellana*, 701 S.W.2d 75 (Tex.App.—Austin 1985, no writ)  
*Hardware Dealers Mut. Fire Ins. Co. v. Ovalle*, 470 S.W.2d 241 (Tex.Civ.App.—Corpus Christi 1971, no writ)  
*Henry Schein, Inc., et al. v. Stromboe, et al.*, 28 S.W.3d 196, (Tex.App.—Austin, 2000, pet. pending on reh.)  
*Johnson v. J. Hirman Moore, Ltd.*, 763 S.W.2d 496 (Tex.App.—Austin 1988, writ denied)  
*Lone Star Greyhound Park, Inc. v. Texas Racing Com'n*, 863 S.W.2d 742 (Tex.App.—Austin 1993, writ denied)

*Lovell v. Western Nat. Life Ins. Co.*, 754 S.W.2d 298 (Tex.App.—Amarillo 1988, writ denied)  
*Lubin vs. Farmers Group Inc.*, 157 S.W.3d 113 (Tex.App.—Austin 2005, pet. filed)  
*McKnight v. Riddle & Brown, P.C.*, 877 S.W.2d 59 (Tex.App.—Tyler 1994, writ denied)  
*Medical Protective Co. v. Glanz*, 721 S.W.2d 382 (Tex.App.—Corpus Christi 1986, writ ref'd)  
*Miller v. State*, 508 S.W.2d 693 (Tex.Civ.App.—San Antonio 1974, no writ)  
*Monsanto Company, et al. v. Mike Davis, et al.*, 25 S.W. 3d 773 (Tex.App.—Waco 2000, review dismissed w.o.j.)  
*Morgan Exp., Inc. v. Railroad Com'n of Texas*, 749 S.W.2d 134 (Tex.App.—Austin 1987, writ denied)  
*National Sur. Corp. v. Dominguez*, 715 S.W.2d 67 (Tex.App.—Corpus Christi 1986, no writ)  
*Sears, Roebuck & Co. v. Hurst*, 652 S.W.2d 563 (Tex.App.—Fort Worth 1983, writ ref'd n.r.e.)  
*State Farm Fire & Cas. Co. v. Taylor*, 706 S.W.2d 352 (Tex.App.—Fort Worth 1986, writ ref'd n.r.e.)  
*State Farm Fire & Cas. Co. v. Taylor*, 832 S.W.2d 645 (Tex.App.—Fort Worth 1992, writ denied)  
*Taylor v. State Farm Lloyds, Inc.*, 124 S.W.3d 665 (Tex.App.—Austin, 2003, no writ)  
*Underwriters Life Ins. Co. v. Cobb*, 746 S.W.2d 810 (Tex.App.—Corpus Christi 1988, no writ)

**United States Courts of Appeals**

*281-300 Joint Venture v. Onion*, 938 F.2d 35 (5<sup>th</sup> Cir. 1991)  
*Cathey v. Dow Chem. Co. Med. Care Program*, 907 F.2d 554 (5<sup>th</sup> Cir. 1990)  
*Federal Sav. & Loan Ins. v. Kralj*, 968 F.2d 500 (5<sup>th</sup> Cir. Tex. 1992)  
*Hogue v. United Olympic Life Ins. Co.*, 39 F.3d 98, 30 Fed.R.Serv.3d 1500 (5<sup>th</sup> Cir. Tex. 1994)  
*Muzyka v. Remington Arms Co.*, 774 F.2d 1309 (5<sup>th</sup> Cir. 1985)  
*Total Plan Serv., Inc. v. Texas Retailers Ass'n*, 932 F.2d 357 (5<sup>th</sup> Cir. 1991)  
*Total Plan Serv., Inc. v. Texas Retailers Ass'n, Inc.*, 925 F.2d 142 (5<sup>th</sup> Cir. 1991)  
*United Teachers Assoc. Ins. Co. v. MacKeen & Bailey, Inc.*, 99 F.3d 645 (5<sup>th</sup> Cir. Tex. 1996)