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#### SUMMARY

- Supreme Court rules on the “auto-use” exclusion
- Court uses, but does not adopt, framework from Appleman/Couch treatises on insurance law
- Analysis: 1) inherent nature of vehicle; 2) within natural territorial limits; and, 3) automobile must produce the injury

#### NEWS:

Thanks to all those that attended our October Seminar. We had a good turnout. We hope that the materials presented proved useful.

Congrats to Tamara Rodriguez, Lisa Garcia and Steve Haynes. Each were in trial this past month and all three obtained great results!

# VLRH Newsletter

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## F250: A Hard Working Pick-up

On October 1, 2010, the Texas Supreme Court ruled on *Mid-Continent Casualty Co. v. Global Enercom Management, Inc.* — a case dealing with the “auto-use” exclusion of commercial general liability policies (“CGL”).

The underlying facts in *Mid-Continent* were this: subcontractors repairing a cell tower needed to climb the tower to take measurements. Three workers were hoisted on a rope via a pulley. The pulley was attached to their work truck’s front hooks, which was driven in reverse by the crew’s foreman. The men were lifted 80 feet when, well, disaster struck.

Following the accident, the contractor was sued. It sought indemnity from the insurance company that issued the CGL and a commercial auto policy (“CAP”). The CGL was the primary policy with a \$1,000,000 limit. The limit on the CAP was \$100,000. In reviewing the case, the Court of Appeals found that the workers’ deaths did not arise out of the use of a motor vehicle. Thus, the automobile-use exclusion did not apply and the insurance company was on the “hook.”

The Supreme Court disagreed. The Court highlighted that the F-250 work truck hauled and towed materials at a work site. The Court went on to explain that the accident occurred within the “territorial limits” of the truck. The Court found it inconsequential that the truck was behind a

building and that the driver could not even see the workers being hoisted until they were about 20 feet up in the air. The workers were attached to a pulley system, which was part of the vehicle that was being used at the time of the accident.

In reaching their decision, the Court looked at the CGL policy. It defined “auto” to include “attached machinery and equipment.” Second, the Court used, but did not adopt, factors from the Appleman/Couch treatises on insurance. The treatises set out the following analysis: 1) the accident must have arisen out of the inherent nature of automobile; 2) the accident must have arisen within the natural territorial limits of the automobile; and, 3) the automobile must not merely contribute to cause the condition but must produce the injury.

In this case, the contractor argued that the truck did not produce the injury. They argued that the rope snapping caused the accident. According to the contractor, the truck merely provided the power to hoist the workers. Unmoved, the Supreme Court reasoned that, without the truck, the employees would not have accomplished anything. Accordingly, the “auto-use” exclusion was applicable and the CGL did not provide coverage.

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