



FROM THE SUPREME COURT

March 28, 2008

Unauthorized Practice of Law Committee v. American Home Assurance Co., Inc. et al. - Case No. 04-0138

In an opinion by Justice Hecht, a majority of the Supreme Court modified the lower court's ruling on "captive law firms" and affirmed. The Court held that liability insurers may use staff attorneys and "captive law firms" to defend an insured so long as their interests are congruent. "Congruent" means that the interests of the insurer and insured are aligned to defeat the claim and there is no conflict of interest between them. The staff attorney or captive law firm must disclose their affiliation with the insurer to the client/insured.

The majority held that a corporation does practice law only when it hires an attorney to represent the unrelated interests of third parties. It does not practice law when it retains counsel solely to perform its contractual duty to defend others, provided the interests of the insurers and the insured are congruent. Insurance defense counsel are not prohibited from dual representations of the interests of the insured/client and the insurer, but counsel does have a duty to protect the rights of the insured/client from being compromised by the insurer. The insurer has a contractual right to control the defense as if it were the client where there is no conflict of interest. The possibility of conflicts of interest due to reservation of rights, protecting the insured's confidential information, responding to *Stowers* demands, litigation guidelines, etc. should be handled on a case-by-case basis by counsel.

Justice Johnson dissented, joined by Justice Green, followed the reasoning in amicus briefs submitted by TADC and TMA. Under existing precedent, Justice Johnson concluded that hiring a lawyer to represent an insured who is a legally separate person from the corporation is the practice of law. Maximization of corporate profits is the chief goal of corporate management; staff attorneys by virtue of human nature are not immune to cost-cutting pressures. In a private firm, the owners are themselves attorneys who are ultimately bound by professional ethics, unlike corporate management.

It is anticipated that there will be one or more notices for rehearing filed. The TADC is currently reviewing this opinion and will keep the membership informed.

To read the opinion in full, [CLICK HERE](#)

To read the dissent in full, [CLICK HERE](#)

Texas Association of Defense Counsel, Inc.

400 W.15th Street, Suite 315, Austin, Texas 78701 512.476.5225 - 512.476.5384 FAX -tadc@tadc.org