

NO. _____

**IN RE: ALLSTATE COUNTY
MUTUAL INSURANCE
COMPANY AND DAVID
GONZALEZ
RELATORS.**

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**IN THE SUPREME

COURT OF TEXAS**

**RELATORS' MOTION FOR EMERGENCY STAY OF ALL FURTHER
PROCEEDINGS PENDING RESOLUTION OF WRIT OF MANDAMUS**

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW, Relators Allstate County Mutual Insurance Company and David Gonzalez (collectively, "Relators"), and file this Motion for Emergency Stay of all **Further** Proceedings pending resolution of the Writ of Mandamus and in support thereof would show the Court the following:

I.

INTRODUCTION

1. The **real** parties in interest **are** Jorge Manllo Karim and Tercsita S. De **Manllo**. The respondent is the Honorable **Arnoldo Cantu Jr.**, County Court Judge, County Court at Law Number Five **(5)**.

2. Relators filed their Petition for Writ of Mandamus concurrently with this Motion **for** Emergency Relief.

3. Relators attach a certificate of compliance certifying that on October 5, 2006, they made a diligent effort *to* notify respondent and the real parties in interest by fax that a motion for temporary relief would be **filed** in compliance with Tex. R. App. P. 52.10(a). *See attached Exhibit "A."*

4. This case arises out of an automobile accident that Jorge Manllo Karim and Terestita De Manllo ("**Real Parties in Interest**" or "**Plaintiffs**") were involved in on February 6, 2004 with Defendants Tae **Sun** Cho and **Sang** M. Cho (the "**Cho's**"). The Real Parties in Interest sued both the adverse driver, Sang M. Cho and the **vehicle** owner, Tae **Sun** Cho. In addition, the Real Parties in Interest sued the Cho's insurance carrier, Allstate County Mutual Insurance Company ("**Allstate**") and its adjustor David Gonzalez ("**Gonzalez**").

5. The case was originally **filed** in **the** County Court at Law Number Five (5) of Hidalgo County, Texas. Plaintiffs filed their Original Petition in this case on December 13, 2005, which named Allstate and Gonzalez as Defendants. Relators filed an Original **Answer** on January 25, 2006. **Subsequently**, Relators filed a First Amended Original Answer on **February 8**, 2006 objecting to **the** standing of Plaintiffs to pursue the claims **and** asserting that the claims **were** barred as a matter of **law**.

6. In conjunction **with** the filing of the lawsuit. Plaintiffs served thirty-two (32) interrogatories, eighty-nine (**89**) requests for production, and thirty (30)

requests for admissions on **Allstate**. Plaintiffs also served twenty-seven (27) interrogatories, eighty-nine (89) requests for production, and thirty-five (35) requests for admissions to Gonzalez. Relators objected to all discovery on the grounds that the discovery was overly **broad**, burdensome, frivolous and harassing **in** light of the well-established principle that prohibits direct actions by third parties, such **as** the Plaintiffs, against insurance companies.

7. Plaintiffs filed a Motion to Compel the discovery responses and a hearing was held on April 17, 2006 at which the Respondent took the matter under advisement. Relators filed a Motion to Dismiss and/or for Summary Judgment in response to Plaintiffs Motion to Compel asserting they **were** not proper parties to the case and more importantly that Plaintiffs could not assert a cause of action against them since no special relationship or duty exists between the parties.

8. The trial court denied Relators' Motion for Summary Judgment and ordered Relators to respond to Plaintiffs' numerous, voluminous discovery requests. The Court signed orders dated **July 19, 2006**, granting **Plaintiffs'** Motion to Compel and ordering Relators to respond in total to more than 300 discovery requests **within 30 days**. A copy of the Order attached Exhibit "B."

9. Relators subsequently filed Petition for Writ of Mandamus and a Motion for an Emergency Stay with the 13th Court of Appeals on August 18, 2006. The Court of Appeals issued a per curiam opinion on September 28, 2006 denying the

Petition and lifting the emergency stay. A copy of that Opinion is attached as Exhibit "C".

10. Relators respectfully **request** that an **emergency stay be granted**. Relators **are** simultaneously filing a Petition for Writ of Mandamus and are seeking this emergency relief based on the trial court's abuse of discretion in granting Plaintiffs' Motion to Compel and allowing discovery **to** proceed in a case by a third party **claimant** against an insurance company in a state that does not allow direct actions as a matter of law.

II.

STAY OF ALL FURTHER PROCEEDINGS

11. In accordance with Texas Rule of **Appellate** Procedure 52.10(b), this Court is **allowed** to grant temporary relief pending the determination of an original proceeding. See Tex. R. App.P. 52.10(b). Here, the stay of all further proceedings **before** the trial court pending the resolution of the mandamus is necessary to **preserve** the rights of Relators.

12. This Court should stay all further proceedings **before** the trial court because Allstate and Gonzalez contend they are not proper parties to the underlying lawsuit because Texas is not a **direct** action state. Nonetheless, they are being subjected to overbroad burdensome and **harassing** discovery for which they are seeking mandamus **relief**. **As** such, the stay is necessary because it will prevent the **expense** and inconvenience of further proceedings in this matter, including discovery, depositions, and hearings, until the issue of the propriety of the

discovery can be considered by this Court. Thus. Relators respectfully request the stay of all further proceedings pending the resolution of the Mandamus.

13. Further. the emergency stay is necessary to maintain the status quo of the **parties** and **preserve the** Court's jurisdiction to consider the merits of the original **proceeding**. *In re Reed*, 901 S.W.2d 604. **609** (Tex. App.-San Antonio 1995, orig. proceeding). This Court should stay **all** further proceedings before the trial **court** until the Court can determine **whether** the trial court abused *its* discretion in granting Plaintiffs' Motion to Compel **and** allowing discovery **to** proceed against the Relators.

14. Considering the discovery dispute that is subject of this mandamus, Relators should not be required to **participate** in any further discovery or further proceedings until this petition can be ruled upon. Relators **will** show the **court** in their Petition for Writ of Mandamus that the trial court clearly abused its discretion and that Relators **have** no adequate remedy on **appeal**.

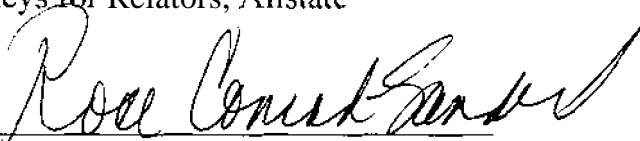
III.

CONCLUSION

15. Considering the discovery **dispute** which is the subject of the Petition for Mandamus, it would be unfair **to** require the Relators to expend unnecessary time and finances **on** further proceedings pending the outcome of this mandamus.

WHEREFORE, PREMISES CONSIDERED, ALLSTATE and GONZALEZ pray that this Court **Stay** all further proceedings pending before the trial court, including discovery, depositions, and hearings.

Respectfully submitted,
ROERIG, OLIVEIRA & FISHER, L.L.P.
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(956) 393-6300
(956) 386-1625 (Fax)
Attorneys for Relators, Allstate

By 
JEFFREY D. ROERIG
Texas State Bar #17161700
ROSEMARY CONRAD-SANDOVAL
Texas State Bar #04709300

CERTIFICATE OF COMPLIANCE

Under Texas Rule of Appellate Procedure 52.10(a), I certify **that** on October 6, 2006, I made a **diligent** effort to notify all parties **to** the original proceeding by fax **that** a motion for temporary relief would be filed.


ROSEMARY CONRAD-SANDOVAL

CERTIFICATE OF SERVICE

I, **the** undersigned, hereby certify that a true and correct copy of the foregoing has been mailed, Certified Mail, Return Receipt Requested, to the Attorneys of Record, **as** follows:

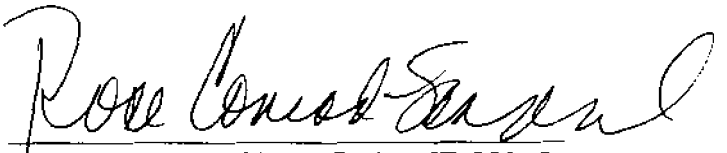
Mr. Will Hughes
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5415 N. McColl, Ste. 106
McAllen TX 78504

Hon. Arnaldo Cantu, Jr., County Court
Judge, County Court At Law Number 5
HIDALGO COUNTY COURTHOUSE
100 N. Closner
Edin burg, Texas 78539

on this 10 day of October, 2006.

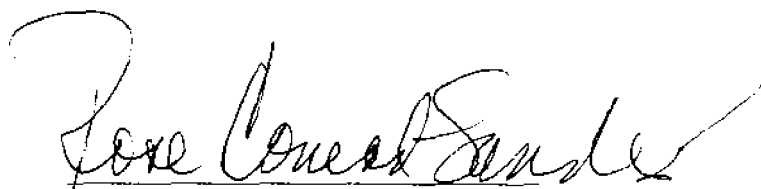

ROSEMARY CONRAD-SANDOVAL

VERIFICATION


STATE OF TEXAS §
HIDALGO COUNTY §

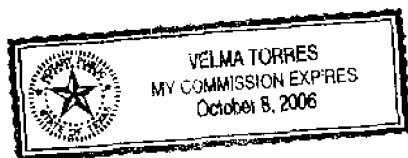
Before me, the undersigned notary, on this day personally appeared Rosemary Conrad-Sandoval, a person whose identity **is** known to me. **After** I administered an oath to her, **upon** her oath she said the following:

1. My name is Rosemary Conrad-Sandoval, and I am capable of making this affidavit. **The** Facts in this verification are within my personal knowledge and are true and correct,
2. **The** factual matters set forth in the Motion are true and correct based on my personal knowledge of those facts and/or **my** review of the pleadings and discovery in this case.


Rosemary Conrad-Sandoval

Sworn and Subscribed before me by Rosemary Conrad-Sandoval on October 6th, 2006.


Notary Public in and for
the **State** of Texas



My Commission Expires: 10/8/06

Exhibit A

ROERIG, OLIVEIRA & FISHER, L.L.P.
ATTORNEYS AT LAW

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Crisanta Guerra Lozano
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Personal Injury Trial Law
Texas Board of Legal Specialization

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Civil Trial Law
Texas Board of Legal Specialization

October 6, 2006

File No.: 25,042

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Hon. Arnoldo Cantu, Jr.
County Court Judge, CCL #5
HIDALGO COUNTY COURTHOUSE
100 N. Clossner
Edinburg, Texas 78539

RE: CL-05-3167-E; Jorge Manllo Karim and Teresita S. De Manllo vs. Allstate County Mutual Insurance Company, David Gonzalez, et al; In County Court at Law No. Five (5) of Hidalgo County, Texas

In Re: Allstate County Mutual Insurance Company and David Gonzalez
13th Court of Appeals, Corpus Christi, Texas

Dear Sir or Madame,

In compliance with Texas Rules of Appellate Procedure 52.10(a), this is to notify all parties to the original proceeding that a **Motion for Emergency Stay of All Proceedings** will be filed in the Supreme Court of Texas in conjunction with a Petition for Writ of **Mandamus**, in regards to the above mentioned case.

Sincerely,

ROERIG, OLIVEIRA & FISHER, L.L.P.


Rosemary Conrad-Sandoval

RCS/mr

Exhibit B

CAUSE NO. CL-05-3167-E

FILED
AT _____ O'CLOCK _____ M
JUL 19 2006
IN THE COUNTY COURT
EDDY TREVINO, COUNTY CLERK
COUNTY COURT AT LAW NO. _____ OF HIDALGO CO
BY _____ DEPUTY
AT LAW NO. 5 OF _____

JORGE MANLLO KARIM AND
TERESITA S. DE MANLLO

VS.

ALLSTATE COUNTY MUTUAL INSURANCE:
COMPANY, DAVID GONZALEZ, AND
TAE SUN CHO A/K/A SANG M. CHO

HIDALGO COUNTY, TEXAS

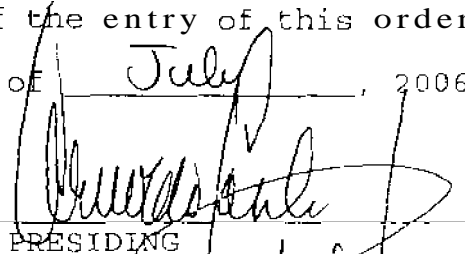
**ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL RESPONSES
TO PLAINTIFFS' INTERROGATORIES, REQUESTS FOR
ADMISSION AND REQUESTS FOR PRODUCTION**

CAME ON FOR CONSIDERATION, Plaintiffs' Motion to Compel all Defendants to Respond to Plaintiffs' Interrogatories, Requests for Admission and Requests for Production, and the Court is of the opinion that said motion is well taken and accordingly;

IT IS THEREFORE ORDERED that Plaintiffs' Motion to Compel Allstate and David Gonzalez to Respond to Plaintiffs' Interrogatories, Requests for Admission and Requests for Production is in all things granted and it is further ordered that the defendant driver shall provide plaintiffs with their statements; and

IT IS FURTHER ORDERED that defendants shall fully comply with this order within thirty (30) days of the entry of this order.

SIGNED FOR ENTRY this 19 day of July, 2006.



JUDGE PRESIDING

Copies to:

DATE 8/8/06

[12-wh/lj] c:\files\M-1073\orders\ord-grant

A true copy I certify
EDDY TREVINO
County Clerk, Hidalgo County, Texas
By _____ Deputy

Exhibit C



NUMBER 13-06-458-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE: ALLSTATE COUNTY MUTUAL
INSURANCE COMPANY AND DAVID GONZALEZ

On Petition for Writ of Mandamus and
Motion for Emergency Temporary Relief

MEMORANDUM OPINION

**Before Justices Yañez, Rodriguez, and Garza
Memorandum Opinion Per Curiam**

On August 18, 2006, relators, Allstate County Mutual Insurance Company and David Gonzalez, filed a petition for writ of mandamus with this Court in which they allege that on July 19, 2006, the respondent, the Honorable Arnoldo Cantu, Jr., Presiding Judge of the County Court at Law No. 5, of Hidalgo County, Texas, abused his discretion by entering an order granting plaintiffs' motion to compel responses to plaintiffs' interrogatories, requests for admission and requests for production.

Relators' petition for writ of mandamus **asks** this Court to order the respondent to issue an order denying plaintiffs' motion to compel, **or in the** alternative, to reconsider his ruling. In addition, relators filed an emergency motion for stay, **asking** this Court to order a stay of the trial court's **order** granting plaintiffs' motion to compel responses to plaintiffs' interrogatories, requests for admission and requests for production.

This Court stayed the trial court's order in the underlying action **and** requested a response from **the real parties** in interest, Jorge Manllo Karim and Teresita S. De Ma, **MO**.

Having examined and fully considered the petition for writ of mandamus, the real parties in interest's response, the relators' reply to response, and the real parties in interest's surreply, this Court is of the opinion that relators have not shown themselves entitled to the relief sought and the petition **for** writ of mandamus should **be** denied.

Accordingly, this Court denies the petition and lifts the stay granted on relators' emergency motion. The petition for writ of mandamus is DENIED. See TEX. R. APP. P. 52.8(a).

PER CURIAM

Memorandum Opinion delivered **and**
filed this the 28th **day** of **September**, 2006.