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Deputy

August 23, 2005

Andrew Weber, Clerk
Supreme Court of Texas
201 West 14th Street, Room 104
Austin, Texas 78701

Re: No. 02-0730; *Excess Underwriters at Lloyd's London, et al v. Frank's Casing Crew & Rental Tools, Inc.*; In the Supreme Court of Texas

Dear Mr. Weber:

Enclosed for your receipt are the original and eleven copies of this Letter Brief of Amicus Curiae Brad Fish, Inc. ("Brad Fish, Inc.") in support of Respondent's Motion for Rehearing. Please bring this Letter Brief to the attention of the Court.

Brad Fish, Inc. is a major distributor of air equipment for manufacturing, construction, mining, industrial and oil and gas-related businesses. It has been in business in Texas since 1968, with locations in Houston, San Antonio and Harlingen. It sells and supports a full line of Sullair electric and diesel air compressors, air dryers, vacuum pumps and tools, and it maintains a fabrication shop at its Texas locations to design, fabricate and paint engineered products to its Texas customers' specifications. Revenues for 2005 are expected to range from \$15 to \$18 million.

Brad Fish, Inc., as a Texas business concern, has an interest in the relative rights and obligations between itself and its insurers in settling litigation and claims arising out of its products and operations. In *Matagorda County v. Texas Ass'n of County Gov.'t Risk Mgmt. Pool*, 52 S.W.3d 128 (Tex. 2000), this Court set out the carefully limited circumstances under which an insurer can seek reimbursement from its insured for settlements involving uncovered claims. This case has unduly expanded those circumstances. Allowing a liability insurer to seek reimbursement of amounts paid in settlement, even in the circumstances before the Court in *Frank's Casing*, interjects a significant element of uncertainty into the determination of whether to settle a claim against a commercial insured. That uncertainty is the after-the-fact outcome of the contemplated coverage litigation where it may or may not be determined that the claim was covered under the policy and, likewise, whether reimbursement can be had by the insurer. In contrast, under prior Texas law, embodied in *G. A. Stowers Furniture Co. v. Am. Indem. Co.*, 15 S.W.2d 544 (Tex. Comm'n App. 1929, holding approved), the uncertainty arises from the insurer's declination to meet a settlement demand within limits, that uncertainty being the

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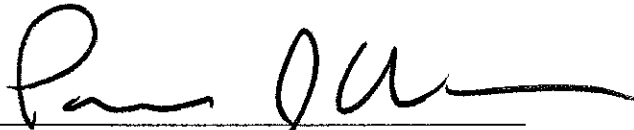
possibility of excess liability in the event that declination proved to be negligent. Now, this case shifts the burden of uncertainty from the insurer to the insured. This result is contrary to the basic goal of commercial insureds such as Brad Fish, Inc. in purchasing insurance coverage protection from that type of uncertainty.

The fee for preparing this brief is to be paid by Brad Fish, Inc. Petitioner was not responsible for the preparation or submission of this brief.

Brad Fish, Inc. asks this Court for the opportunity to address the issues raised in this case. Therefore, Brad Fish, Inc. will be submitting an amicus brief to the Court on or before September 2, 2005 that will discuss those issues in further detail. Brad Fish, Inc. requests that this Court consider the views of amicus curiae before ruling on the motion for rehearing pending before the Court.

Respectfully submitted,

COKINOS, BOSIEN & YOUNG



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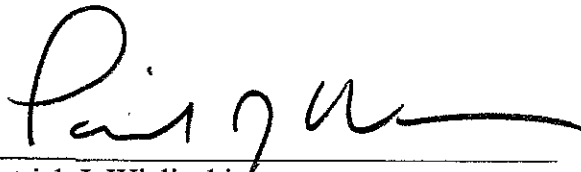
CERTIFICATE OF SERVICE

The undersigned certifies that on August 23, 2005, he served by certified mail, return receipt requested, in accordance with the Texas Rules of Civil Procedure, the foregoing document on counsel of record.

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A handwritten signature in black ink, appearing to read "Patrick J. Wielinski", written over a horizontal line.

Patrick J. Wielinski