



The Weekly Update of Texas Insurance News

## TEXAS INSURANCE LAW NEWSBRIEF



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### **U.S. SUPREME COURT HOLDS INJUNCTION BARS DIRECT ACTIONS AGAINST INSURER FOR BANKRUPT MANUFACTURER**

In a narrow yet significant ruling, last Thursday the United States Supreme Court held that 1986 bankruptcy court orders approving a settlement against an asbestos manufacturer and which encompassed “policy claims...relating to...contributing insurers” precluded direct actions against the insurers under state consumer protection statutes or common law causes of action. In *Travelers Indemnity Co. v. Bailey*, 2009 WL 1685625 (U.S., June 18, 2009), a Travelers insured, Johns-Manville Corporation, filed bankruptcy in light of the heavy exposure arising from asbestos - a product they manufactured for decades. In 1986, a personal injury trust was set up for injured parties and Travelers contributed to the fund. Over a decade later, plaintiffs filed direct actions against Travelers alleging consumer protection violations including failure to warn and conspiring to hide the dangers of asbestos. The trial court entered an order in 2004 finding that the 1986 order barred the claims. The Second Circuit reversed and the United States Supreme Court granted writ of certiorari.

The Supreme Court found that the bankruptcy court had continuing jurisdiction more than a decade after entry of the 1986 orders approving the settlements. And, the lower court could interpret and enforce its own orders, which included the ability to enjoin causes of action against contributing, settling insurers. The Court observed that the lower court’s Insurance Settlement Order “permanently restrained and enjoined...any and all claims arising out of or relating to any or all of the Policies.” After noting that all of the knowledge gained by Travelers arose from its relationship as an insurer for Johns-Manville, the Court held that the terms of the injunction in the settlement order barred the direct actions against Travelers, “and the finality of the 1986...Orders generally stands in the way of challenging their enforceability.” The Court of Appeals judgment was reversed and remanded for further proceedings.

### **TEXAS SUPREME COURT GRANTS PETITION FOR REVIEW IN CASE FINDING HO-B COVERAGE FOR MOLD DAMAGE FROM PLUMBING LEAKS AND SIMILAR ACCIDENTAL DISCHARGE OF WATER**

Last Friday, the Supreme Court of Texas granted petition for review of a poorly reasoned decision issued by the Waco Court of Appeals, *Page v. State Farm Lloyds*, 259 S.W.3d 257 (Tex. App.—Waco June 11, 2008) (*See Texas Insurance Law Newsbrief*, June 16, 2008). *Page* found that because a mold loss resulted from plumbing leaks, the Supreme Court’s decision in *Balandran v. Safeco Ins. Co. of America*, 972 S.W.2d 738 (Tex. 1998)(exclusion repeal provision under exclusion h for foundation damage, created an ambiguity) actually controlled and required coverage. By granting petition for review, the Texas Supreme Court has agreed to take a look at this troubling decision. MDJ&W has the privilege of representing State Farm Lloyds in the appeal. Insurers interested in filing amici should contact founding partner Christopher Martin, or Levon Hovnatanian, the head of MDJ&W’s appellate section.

## **MDJ&W NAMED #1 INSURANCE LITIGATION FIRM IN TEXAS (AGAIN)**

The international research firm of Chambers & Partners (London) announced on June 12, 2009 that our law firm, Martin, Disiere, Jefferson & Wisdom has been ranked #1 Insurance Litigation firm in Texas for 2009-2010. This is the fifth time in the last six years the firm has received this prestigious recognition. The rankings are based on industry interviews, peer reviews, trial and appellate victories in the past 24 months, published legal decisions and judicial recognition of the firm and its lawyers. Founding partner Christopher W. Martin was individually recognized #1 Insurance Attorney in Texas for 2009-2010. And founding partner David D. Disiere was individually recognized #3 Insurance Attorney in Texas for 2009-2010. Both extend their personal gratitude to our outstanding team of attorneys and staff. And, along with the entire firm, we say thank you to our clients who have given us the pleasure and privilege of representing them.

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