



The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF



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TEXAS COURT APPLIES MANIFESTATION TRIGGER TO HOMEOWNER'S PROPERTY DAMAGE CLAIM

The Fort Worth Court of Appeals recently examined the wording of a jury charge which applied a manifestation trigger to a property damage claim under a homeowner's insurance policy and in doing so, helped clarify the appropriate trigger for coverage in the homeowner first party context. In *Allstate Insurance Company v. Hunter*, 2007 WL 4126055 (Tex.App. – Fort Worth November 21, 2007), the homeowner sought coverage for water and mold damage caused by a plumbing leak beneath the home. The insured first noticed a strange smell in the home during a previous, HO-B policy period. But it was not until after that policy was replaced by an HO-A policy that the insured had the house inspected and found a plumbing leak in the crawl space. Allstate denied under the HO-A policy (no coverage) and defended the lawsuit under the HO-B because the insured failed to provide timely notice of the claim. A jury ruled in favor of the homeowners on the breach of contract claim and this appeal followed.

As a matter of first impression for Texas courts, the Fort Worth Court of Appeals applied a manifestation trigger to determine which policy applied to a first-party property damage claim presented under a homeowners' policy. The court then examined the jury charge which asked: "Do you find from a preponderance of the evidence that on or before October 6, 2002 there was rot, mold, or other fungi which was capable of being perceived, recognized and understood?" The court found that this charge was in error because it omitted the word "easily" before the phrase "capable of being perceived, recognized and understood". The court then reviewed the sufficiency of evidence to support the jury's finding and found that while "[t]he evidence does establish that the damage to the Hunter's home may have occurred prior to October 6, 2006" – (the date of the policy change from HO-B to an HO-A), there was no evidence that the damage manifested prior to that date when the proper case law definition of "manifest" is used.

The court also agreed with Allstate's argument that the jury charge, as submitted, utilized "two different manifestation theories or dates, one to trigger coverage under the HO-B policy - when the rot mold of fungi was theoretically capable of perception - and one to determine when the Hunters' duty to give notice arose - when the Hunters actually learned of the mold." The court observed: "The problem with this argument is that if the damage manifested itself on the date that the Hunters smelled it, then that is the date on which the Hunters' duty to notify Allstate of this claim was triggered." Because there "no evidence" "that the damage manifested during the HO-B policy

period,” and because the rest of “the claims were predicated on a finding that their February 6, 2003 claim was covered under the HO-B policy” the court reversed the trial court’s judgment and rendered judgment that the Hunter’s take nothing.

**CGL INSURER HAD NO DUTY TO DEFEND OR INDEMNIFY,
“PRODUCTS – COMPLETED OPERATIONS” EXCLUSION PRECLUDES
COVERAGE**

Last Tuesday, the U.S. District Court for the Southern District of Texas held that the products-completed operations exclusion precluded coverage in a products liability lawsuit presented by a deceased aircraft mechanic’s spouse. Mid-Continent argued in part that the injuries were allegedly caused by exposure to completed fuel injectors and fuel pumps handled by the decedent, away from the insured’s premises and thus the exclusion applied. The court conducted an eight-corners analysis and determined that based on the allegations in the lawsuit and the policy language, Mid-Continent had no duty to defend in the underlying lawsuit. And, because the same reasons that negated the duty to defend, also negated any duty to indemnify, the court issued final judgment finding Mid-Continent had no duty to defend or indemnify the insured. **Editor’s Note:** Martin, Disiere, Jefferson & Wisdom, L.L.P. had the privilege of representing Mid-Continent in this lawsuit and congratulates Houston Partner Robert Dees and Associate Chris Harshbarger for securing this significant summary judgment ruling.

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