

# TEXAS INSURANCE LAW NEWSBRIEF

MAY 5, 2015

## JURY TRIAL VERDICT FAVORABLE TO DEFENSE IN WIND/HAIL COVERAGE CASE

In *Andrew Pitre v. State Farm Lloyds*, Dkt 4-13-cv-03162 (S.D.Tex. - Houston, 2015), after a three day trial in federal court on this first party property case concerning claims of alleged wind and hail damages to a residential roof and water intrusion damages to the home, the jury deliberated for about six hours and found only \$20,000 in damages for breach of contract. Plaintiff claimed all the slopes of his roof sustained covered damage, which in turn caused the water intrusion damages. Plaintiff's expert opined the damages were in excess of \$43,000. Defendant's expert opined the damages were around \$13,000. All extra-contractual claims were dismissed by the Court before the matter was submitted to the jury. Plaintiff was represented by Scott Hunziker of the Voss Law Firm. The Defendant was represented by Brian Chandler.

## BURDEN TO PROVE PROPERTY DAMAGE NOT SATISFIED BY LAW OF THE CASE DOCTRINE

In *American Home Assur. Co. v. Oceaneering Int'l, Inc.*, 2015 WL 1881911 (5<sup>th</sup> Cir. April 27, 2015)(*per curiam*), Chevron hired Aker Maritime, Inc. to provide design and engineering services for the construction of a "riser system" that attaches a floating spar to the ocean floor as part of an off shore oil production facility. A stability problem plagued the riser system, and eventually resulted in a crack in the spar's hull. Oceaneering International, Inc. repaired the hull, and Chevron put Aker in charge of designing a permanent fix. Aker ordered bolts from Lone Star as part of the fix, but Lone Star substituted the wrong bolts for the right ones. Oceaneering unknowingly accepted the wrong bolts. The bolts later failed. Chevron later sued Oceaneering, and obtained a judgment based on an appellate court's statement that the defective bolts damaged other property, the spar.

In the subsequent coverage suit, American Home Assurance denied coverage under its Commercial General Liability policy because there was no "physical injury to tangible property, including all resulting loss of use of that property," and for the sistership exclusion. The district court granted American Home a summary judgment based on the sistership exclusion. On appeal, the Fifth Circuit decided not to reach that issue. The Fifth Circuit held that Oceaneering failed to "carry its burden of establishing 'property damage' as required by the Policy" in order to trigger a duty to indemnify. The Court examined the prior opinion's conclusion that the bolts caused damage to other property, and the 5<sup>th</sup> Circuit concluded it was not binding in this separate coverage action through the law of the case doctrine because that prior statement was in a separate proceeding, rather than a subsequent stage of the same proceeding. The law of the case doctrine requires a prior finding to be in a later stage of the same proceeding. Additionally, the prior finding was not addressing "physical injury to tangible property" under the Policy, but rather was a technical interpretation of whether or not there was damage under a statute for recovery of Redhibition.

## PROFESSIONAL SERVICES EXCLUSION BARS COVERAGE FOR CLAIMS ARISING OUT OF A NUCLEAR POWER PLANT

In *Hartford Cas. Ins. Co. v. DP Engineering, LLC*, 2015 WL 1927462 (N.D.Tex. April 27, 2015), Entergy Operations operated a nuclear power plant which required them, as part of maintenance to refurbish a large component, known as a stator, by a process requiring the stator to be moved from one physical location to another location in the plant. This process was known as the "stator project." DPE was an engineering company that contracted with Entergy to provide Entergy with consulting, professional, or other technical work as requested by Entergy. DPE undertook certain work related to the stator project. Scroggins was a DPE employee assigned by DPE to perform some of the work. On March 31, 2013, the stator was dropped, thereby causing significant property damage and bodily injuries. Plaintiff carriers filed a declaratory judgment action seeking a ruling of no duty to defend or duty to indemnify in two underlying lawsuits because of the professional services exclusion in their insurance policies.

The court granted the Carriers' motions for summary judgment because the allegations in the underlying lawsuits are claims arising out of the rendering of, or failure to render, professional engineering services in accomplishing the stator project. As stated by the court, "the conclusion to be drawn from the facts alleged in the complaints is inescapable that the plaintiffs are complaining that DPE had specialized engineering knowledge and training that it failed to use, or misused, in such a way that its conduct was a factor in the failure .... There is no rational reading of any state lawsuit complaints other than that each theory of recovery alleged bears an incidental relationship to professional engineering services of DPE."

## MDJW First Friday Webinar - Texas Liability Insurance Update

**GREG FINNEY - PRESENTER**  
**MAY 8, 2015**

Our next webinar will be held on Friday, May 8, 2015 at noon Central time. Houston Associate Gregory J. Finney will present "Texas Liability Insurance Update." The program will look at the recent changes to the bad faith standard in Texas by our state's courts, litigation trends in such cases, claims handling implications, and practical considerations for those in the industry.

Mr. Finney focuses on Insurance, Complex Commercial Litigation, Fraud and Bad Faith, Real Estate, Construction, Transportation, Class Action and MDL. He also has represented clients in various commercial real estate matters. Mr. Finney's experience includes first and second chair trial appearances along with a number of appellate arguments. See <http://www.mdjwlaw.com/professionals-Gregory-Finney.html> for additional information about Greg Finney

We have applied to the Texas Department of Insurance for one hour of Texas CE credit and to the Texas State Bar for one hour of CLE credit. We do not apply for CE or CLE in any other state. However, we can provide a Certificate of Attendance for you to use in applying for credit with other agencies. Please note that we do not guarantee that any other agency will accept the Certificate of Attendance.

Register for this webinar at: <https://attendee.gototraining.com/r/8444977543848338177>. You will have the option of supplying your Texas Department of Insurance license number and/or Texas State Bar number during the registration process if you will be requesting CE or CLE credit. If you are not requesting credit, you do not need to complete those fields. After registering you will receive a confirmation email containing information about joining the training. We have a limit of 200 participants for the webinar. Registration will close 30 minutes before the presentation.

If you have any questions, please send an e-mail to [ce@mdjwlaw.com](mailto:ce@mdjwlaw.com) or call Cynthia Glenney at 713-632-1737.

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