

# TEXAS INSURANCE LAW NEWSBRIEF

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## U.S. DISTRICT COURT DISMISSES INSURER'S DECLARATORY JUDGMENT ACTION BECAUSE THERE WAS NO UNDERLYING LAWSUIT

Last week, based on lack of subject matter jurisdiction, the United States District Court for the Northern District of Texas dismissed an insurer's lawsuit seeking a declaratory judgment that it had no duty to defend or indemnify. The court held that, although multiple claims had been presented to the insurer, the insurer's declaratory judgment action was not ripe because no lawsuit had been filed and no potential lawsuit had reached judgment or settlement. In *Atlantic Casualty Ins. Co. v. Taylormade Heat & Air, LLC*, No. 3-19-CV-01618-E, 2020 WL 707801 (N.D. Texas, Dallas Division, Feb. 11, 2020, mem. op.), Atlantic Casualty Insurance Company ("Atlantic") issued a commercial general liability insurance policy to Taylormade Heat & Air, LLC ("Taylormade"). During the policy period, when two employees of Taylormade were replacing a water heater in a condominium unit, they activated the overhead sprinkler system, causing damage to flooring, baseboards, ceilings, walls, drywall, and cabinetry in several units.

Although no lawsuits were filed against Taylormade, some condominium owners made claims on the insurance policy issued by Atlantic, and Great American Insurance Company ("Great American") asserted subrogation claims against the policy. As such, Atlantic filed a lawsuit against Taylormade, the condominium owners, and Great American, seeking a declaratory judgment that any damage arising out of Taylormade's water heater installation was not covered under Taylormade's policy (because Taylormade was classed for HVAC operations, not for installation of a water heater) and, therefore, Atlantic did not have a duty to defend or indemnify Taylormade, the condominium owners, or Great American.

Taylormade and Great American filed separate motions to dismiss, contending that Atlantic's declaratory judgment action was not ripe because no underlying lawsuit had been filed and, therefore, the court lacked subject matter jurisdiction to issue a declaratory judgment. In response, Atlantic contended that the existing claims ripened its declaratory judgment action, and there did not need to be an underlying lawsuit. Atlantic relied on Georgia and Mississippi law, including *Atlanta Cas. Co. v. Fountain*, 413 S.E.2d 450, 451 (Ga. 1992), which held: "When a claim for insurance has been made, and a legitimate question exists as to the propriety of denying coverage, the insurance company may file a declaratory judgment before denying the claim. It is not necessary for the insurance company to wait for the insured to file a lawsuit against it."

The United States District Court for the Northern District of Texas, reasoning that no Georgia or Mississippi cases follow the eight corners rule as Texas does (meaning the duty to defend may only be determined by the facts alleged in a third-party plaintiff's petition and the coverage provided in the policy), dismissed Atlantic's suit for lack of subject matter jurisdiction. The court held that any determination of Atlantic's duty to defend was premature because it was undetermined whether any suit would be filed, and any determination of Atlantic's duty to indemnify was premature because no potential lawsuit had reached judgment or settlement.