



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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TEXAS SUPREME COURT: MOLD FROM PLUMBING LEAKS IS COVERED AS TO PERSONAL PROPERTY BUT NOT THE STRUCTURE UNDER A TEXAS HOMEOWNERS POLICY - FORM B

In what may be the last of the homeowners mold-coverage decisions, the Supreme Court of Texas issued a 9-0 opinion a week ago Friday in *State Farm Lloyds v. Page*, --- S.W.3d ----, 2010 WL 2331460 (Tex. June 11, 2010) (NO. 08-0799). By far the biggest issue in the case was whether mold damage to a dwelling that resulted from plumbing leaks is covered by the Texas Standard Homeowner Policy – Form B. The court held that mold damage to a dwelling resulting from plumbing leaks is not covered in the HO-B policy. The court concluded that neither *Fiess v. State Farm Lloyds* (202 S.W.3d 744 (Tex. 2006) (Newsbrief) nor *Balandran v. Safeco Ins. Co. of America.*, 972 S.W.2d 738 (Tex. 1998), (Newsbrief) was on point. Regarding *Fiess*: "While our decision in *Fiess* was unquestionably broad, we cannot say that it unequivocally vitiated coverage for all mold damage no matter what the case, as State Farm claims. . . . Nevertheless, our policy interpretation in *Fiess* is more consistent with State Farm's position today than with Page's reading of the policy language." The court found the analysis by the Fifth Circuit in *Carrizales v. State Farm Lloyds*, 2008 WL 467097 (5th Cir. February 22, 2008) helpful: "[I]n *Carrizales* . . . the [Fifth Circuit] concluded: 'we cannot envision the role the mold exclusion would play if Coverage A (implicitly) as well as Coverage B (explicitly) covered mold damage resulting from plumbing leaks.' Neither can we."

Again relying on *Carrizales*, the court wrote that claims for mold damage to *personal property* resulting from plumbing leaks are covered by the HO-B policy. The Supreme Court even observed in a footnote: "State Farm argued against coverage for personal property in the court of appeals, but apparently has since abandoned that argument in this Court." While this portion of the supreme court's opinion is advisory, in all likelihood the court wrote on this issue because they do want any other cases on mold under the HO-B policy and so they answered may be the last possible mold issue under the HO-B policy.

[Editor's Note: Chris Martin, Levon Hovnatanian, and Patrick Kemp of our office had the pleasure of representing State Farm in this case from the trial court through the Texas Supreme Court and we appreciate their willingness to challenge these issues through the high court of Texas in order to finally resolve these important legal issues.]

WORLD TRADE CENTER SETTLEMENT RENEGOTIATED

Also last week, a federal judge approved the parties' efforts to renegotiate a settlement agreement to compensate about 10,000 workers whose health was injured due to the rescue and clean up at the WTC. The new settlement of \$712.5 million increases the payouts to the injured workers by up to \$125 million,

and caps the fees going to plaintiffs' attorneys at 25 %. New York City is also waiving certain workers compensation liens.

The WTC Captive Insurance Company is paying an additional \$50 - \$55 million to the settlement fund. The settlement also establishes objective criteria, based upon accepted medical standards, to assess the type and severity of each illness alleged. For example, those suffering debilitating respiratory illnesses could receive more than \$800,000, and approximately \$1.5 million could go to death claims. Plaintiffs who fear becoming ill but have no injury will receive \$3,250. A separate policy through MetLife will provide coverage for certain blood and respiratory cancers diagnosed through the coverage period, paying a benefit of up to \$100,000.

BP ASKED TO CREATE FUND FOR CLAIMS FROM DEEPWATER HORIZON OIL SPILL VICTIMS

The Wall Street Journal reported last week that the Obama Administration will ask BP to establish a fund to compensate victims of the Deepwater Horizon oil spill. The article also cites legal experts saying that while other government-run funds exist (e.g. Superfund legislation, asbestos liability funds, and the 9/11 victims compensation fund), they differ from the proposal facing BP.

As the responsible party, BP has already begun accepting claims filed by individuals and businesses to cover property damage and lost income as a result of the oil spill. BP has twenty-two claim centers set up from Apalachicola, Florida, to New Iberia, Louisiana. BP's latest update of its response to the oil spill suggests that to-date over 51,000 claims have been submitted and more than 26,500 payments made, totaling over \$62 million. These claims totals will continue to rise as long as the oil continues to spill and affect the area and in the event of a large storm during hurricane season.

We will continue to monitor this situation as it develops.

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