

THOUGHT LEADERSHIP

News

## COURT FINDS NO DUTY TO INDEMNIFY – LOSS PREDATES POLICY PERIOD

Newsbrief

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Last Monday, a U.S. District Court Judge for the Southern District of Texas examined an insurer's duty to indemnify an insured who settled claims alleging damage to land and its use and enjoyment and granted summary judgment in favor of the insurer. In *Mount Vernon Fire Ins. Co. v. Boyd*, 2012 WL 4356285 (S.D.Tex. September 24, 2012), the insurer issued a Commercial General Liability policy to Boyd effective April 28, 2009. Boyd was sued by an adjacent land owner for draining a shared lake and for coming onto the adjacent property and removing large amounts of earth and soil. The lawsuit against the insured claimed in part that Boyd began draining the shared lake in March 2008, well before the policy period. Also, the claims related to the soil removal did not mention a specific date but did reference a foreclosure sale of Boyd's property in March 2009 from which the court deduced that the soil removal also took place before the policy period. Accordingly, the court concluded that because the loss or damage was in progress or took place before the policy was in force, the insurer had no duty to indemnify the insured for amounts paid in settlement of the underlying claims.