

THOUGHT LEADERSHIP

News

## TEXAS APPEALS COURT FINDS THAT DESTRUCTION AND FABRICATION OF MATERIAL EVIDENCE DOES NOT WARRANT TRIAL COURT'S DEATH-PENALTY SANCTIONS OR MILLION DOLLAR FEE AWARD AGAINST INSUREDS

Newsbrief

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Last week in *Knoderer v. State Farm Lloyds* (06-13-00027-CV), the Texarkana Court of Appeals reversed a \$1 million award of attorneys' fees and "death penalty" sanctions assessed against a couple whom the trial court found intentionally fabricated photos of flooding damage to collect insurance money from State Farm and then later destroyed evidence relating to these fabricated photographs because the appellate court found the penalties "excessive."

The sanctions were issued after William and Susan Knoderer allegedly pried a water valve fitting from a pipe causing their house to flood in 2008 and then later fabricated six photographs in an attempt to discredit State Farm's analysis of the leak. The trial court also found they later destroyed evidence relating to the photographs in violation of a specific court order that it be preserved.

The court-described "ill will" between the parties which went back several years when the Knoderers sued State Farm on a mold claim and lost. They later added specific mold coverage to their policy but State Farm determined the mold coverage should not have been issued and, pursuant to the applicable policy provisions, notified the insureds the coverage would be rescinded.

In January of 2008, State Farm sent the Knoderers a letter advising that their mold coverage would cease effective March 6, 2008. On the evening of February 20, 2008, a supply line allegedly separated from a brass fitting inside the wall of a utility closet, flooding the Knoderers' residence. An investigator determined the pipe was possibly pried loose with a screwdriver and was unlikely to have been caused by water pressure alone. State Farm demanded access to the home and The Knoderers agreed. After the Knoderers granted State Farm access to the house, the cabinets, countertops, fixtures, appliances, doors, trim, flooring, and bottom four feet of sheetrock were removed from the house by them.

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The Knoderers then filed suit claiming State Farm used deception to increase their damages by misrepresenting in their letters to the Knoderers that State Farm would pay for the demolition and restoration of the house. As discovery progressed, six photographs admitted into evidence by the Knoderers in an effort to prove State Farm had fabricated evidence were themselves determined to have been fabricated by the Knoderers, after investigators found a number of discrepancies in the pictures' metadata. The Knoderers were later found to have disobeyed a specific court order to preserve them.

In addition to granting the death penalty sanction and striking the Knoderers' claims, the trial court awarded the insurance company \$1,000,000 in attorney fees, \$142,339 in expert fees and \$33,474 in costs.

On appeal, the Knoderers argued the death penalty sanctions were inappropriate because the fabrication and destruction of evidence did not "go to the heart of the case." The unanimous appeals panel said it deferred to the factual record developed in the trial court indicating the Knoderers fabricated the six photographs and destroyed evidence, they weren't sufficient to issue sanctions essentially allowing State Farm to prevail in the underlying suit. The appellate court explained: "Here, the destroyed evidence could have supported or undercut only the argument that the six photographs were fabricated, not the ultimate issues in the lawsuit." It continued: "Therefore, the destruction of the data related to the six photographs does not justify a conclusion that the Knoderers' claims lack merit."

At the heart of the court's analysis was the issue of whether the misconduct justified the required implied finding that the Knoderers caused the February 2008 leak. The Court also held the record from the trial court was insufficient to show the required consideration of lesser sanctions before imposing a case-determinative sanction.

As for the monetary sanctions, the appeals court found the fee award was excessive and said fees awarded should be proportional to the misconduct in question only and not the fees incurred in the entire litigation. The court explained: "The award in this case is for essentially the total of State Farm's attorneys' fees in the case—not the attorneys' fees incurred due to the sanctionable conduct." It concluded: "Only the attorneys' fees, expert fee, and costs related to the six fabricated photographs should be included in the sanctions."

Finally, the Court found the sanctions against Mrs. Knoderer were inappropriate because there was no evidence that she directly participated in the misdeeds or whether she was an agent of her husband. The Court cited the Family Code for the proposition that a spouse may not be held liable for the torts of the other spouse.

The Court rendered judgment deleting all sanctions against Mrs. Knoderer and remanded the case to the trial court for further proceedings, including an assessment of lesser sanctions, against Mr. Knoderer.