

Texas Court Affirms Take-Nothing Judgment in Favor of State Farm

Harris Martin, Jan. 18, 2008

State Farm's own Adjusters Guide provided for coverage for ensuing losses, like mold, when the original claim, e.g., tree damage, was covered.

But, the Texas Court of Appeals said that the State Farm Claims Manual (Adjusters Guide) served as no basis for a breach of contract claim nor the legal basis for a negligence claim based on State Farm's claim handling practices (or lack thereof)

HOUSTON — A Texas appellate court majority has affirmed summary judgment in favor of an insurer that paid homeowners \$137,000 under a reservation of rights but cited the homeowners' policy's mold exclusion in rejecting supplemental claims. *Justice v. State Farm Lloyds Insurance Co., et al.*, No. 14-06-00248-CV (Texas 14th Ct. App.).

The 14th Court of Appeals panel, with one justice writing a concurring opinion, ruled Jan. 15 that State Farm's Adjusters Guide provided no basis for the policyholders' breach-of-contract claim and that there was no legal basis for a negligence claim based on State Farm's claims handling practices.

Larry and Beth Justice brought those two claims against State Farm Lloyds after the insurer refused to pay the Justices' claim for additional mold damage that resulted from an incident in 2000 in which a tree fell on their house.

The Justices filed their initial mold claim in 2001 when they discovered mold in the walls of their home. State Farm paid for remediation, cleaning and alternative living expenses under a reservation of rights.

The Justices sued in Harris County's 127th District Court, asserting that State Farm's own Adjusters Guide provided for coverage for ensuing losses, when the original claim, e.g., tree damage, was covered.

The Justices also alleged that State Farm negligently failed to identify damage from the fallen tree that eventually led to mold intrusion.

The District Court granted State Farm's motion for summary judgment, and the policyholders appealed to the 14th Circuit.

The Justices maintained that State Farm could be bound by language in an Adjuster's Guide that, they said, provides that if the initial claim is covered, such as damage from a fallen tree, then any loss proximately caused by that tree is also covered.

"However, the Justices' brief provides no legal authority suggesting that a provision of the Adjusters Guide could be controlling, relevant, or even admissible concerning the meaning or scope of coverage of the policy," Senior Justice Richard H. Edelman concluded in his majority opinion.

Senior Justice Edelman added the policyholders also failed to show how the language in the guide could prevail, given the policy's express mold exclusion.

The majority also found for State Farm on policyholders' claim for negligent claim handling, saying Texas law does not recognize that cause of action.

The senior justice cited a similar holding by the 5th Circuit U.S. Court of Appeals in *Higginbotham v. State Farm Mut. Auto. Ins. Co.* (103 F.2d 456, 460 [5th Cir. 1997]).

The policyholders argued that *Higginbotham* does not apply because State Farm's adjuster assumed a duty to locate water leaks in their home.

The policyholders cited no legal authority for their argument, nor for a similar assertion stemming from an industrial hygiene test, however, Senior Justice Edelman concluded.

Justice Leslie B. Yates concurred in the majority opinion.

Justice Kem T. Frost wrote a separate opinion in which he concurred with the result, but opined that the court needn't consider the Adjuster's Guide because the policy's mold exclusion was unambiguous.

Justice Frost also said that the majority should not have relied on *Higginbotham*, which was merely *obiter dictum* and, in any event, was not binding.

The question of whether Texas recognizes a cause of action of negligent claims handling itself is one of first impression, Justice Frost added, but the court needn't consider it because it was inadequately briefed.

Harry C. Arthur of Houston represented the Larry and Beth Justice.

Dana T. Williams, Levon G. Hovnatanian and Christopher Martin of Martin Disiere Jefferson & Wisdom in Austin, Texas, were counsel for State Farm Lloyds.

Otto Jackie-Don Schacht and William J. Eggleston of Eggleston Briscoe in Houston represented defendant-appellee FT/SEA Consulting.

[CLICK HERE FOR OPINION](#)

