

TEXAS INSURANCE COVERAGE GUIDE



VISION • AGILITY • RESULTS

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COVERAGE

Occurrence	<ul style="list-style-type: none"> ❖ Accident, including continuous or repeated exposure to substantially the same general harmful conditions ❖ Bodily Injury – bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time ❖ Property Damage – physical injury to tangible property or loss of use of tangible property not physically injured
Trigger of Coverage	<ul style="list-style-type: none"> ❖ Manifestation of Damage – Property Damage ❖ Injury in Fact – Bodily Injury ❖ Date of Exposure if progressive disease/illness
Duty to Defend	<ul style="list-style-type: none"> ❖ Eight Corners Rule – Examine pleadings and policy ❖ If at least one claim is covered, duty to defend exists ❖ Factual allegations, not legal theories, control ❖ Generally, under standard liability policies, insurer is entitled to select defense counsel if insurer tenders an unqualified defense to insured
Exception to Eight Corners Rule	<ul style="list-style-type: none"> ❖ Courts may consider extrinsic evidence in limited circumstances to determine fundamental issues of coverage, e.g., whether loss occurred during policy period and whether policy exists
Use of Extrinsic Evidence	<ul style="list-style-type: none"> ❖ Exception only applies when it is initially impossible to discern whether coverage is implicated and when the extrinsic evidence goes solely to a fundamental issue of coverage which does not overlap with the merits of or truth or falsity of facts alleged in the underlying suit
Reservation of Rights	<ul style="list-style-type: none"> ❖ Insurer may waive policy defenses if it assumes insured's defense with knowledge of facts indicating non-coverage and without obtaining a reservation of rights or non-waiver agreement
Duty to Indemnify	<ul style="list-style-type: none"> ❖ Separate and distinct from duty to defend ❖ Based upon actual facts that result in insured's liability ❖ Insurer's duty to indemnify may be resolved by a declaratory judgment action before insured's liability is determined in underlying suit when the same reason that negates the insurer's duty defend likewise negates the insurer's duty to indemnify
Choice of Law	<ul style="list-style-type: none"> ❖ Tex. Ins. Code Article 21.42 - policy payable to a citizen or inhabitant of Texas and insurer doing business within State ❖ Absent application of Article 21.42, Texas follows "most significant relationship" test – factors considered include place of contract, place of incident, place of negotiation, place of performance, and parties' locations

TEX. INS. STATUTES	Unfair Claims Practices	<ul style="list-style-type: none"> ➤ Article 21.21 Texas Insurance Code – cause of action for unfair or deceptive insurance practices ➤ Insurer subject to Article 21.21 liability if it fails to attempt, in good faith, to effectuate a prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear
	Prompt Payment of Claims	<ul style="list-style-type: none"> ➤ Article 21.55 Texas Insurance Code – requires an insurer to follow certain procedures and meet certain deadlines when it receives, accepts, rejects or pays a first-party insurance claim ➤ Article 21.55 penalties not applicable to an insured’s claim for a defense in third-party action; question certified to Texas Supreme Court (10/03/05)
STOWERS	Stowers Doctrine	<ul style="list-style-type: none"> ★ In responding to settlement demands within policy limits, insurer is required to exercise “that degree of care and diligence which an ordinarily prudent person would exercise in the management of his own business” ★ A valid Stowers settlement demand is one that proposes to release the insured fully in exchange for a stated sum of money within policy limits ★ The Stowers duty is activated if three prerequisites are met: (1) the claim against the insured is within the scope of coverage; (2) there is an unconditional demand within policy limits; and (3) the terms of the demand are such that an ordinarily prudent insurer would accept it, considering the likelihood and degree of the insured’s potential exposure to an excess judgment
LIABILITY	Statutes of Limitation	<ul style="list-style-type: none"> ✓ Tort/DTPA – 2 years ✓ Contract – 4 years ✓ Discovery Rule Applies
	Statutes of Repose	<ul style="list-style-type: none"> ✓ 10 years – defective or unsafe condition of real property or deficiency in construction or repair of improvement to real property ✓ 10 years – architects, engineers and design professionals ✓ 15 years (or warranty period if longer) – manufacturer/seller product
	Negligence	<ul style="list-style-type: none"> ✓ Comparative/Proportionate responsibility ✓ Plaintiff may not recover if liability greater than 50 percent
	Joint and Several	<ul style="list-style-type: none"> ✓ Yes, if defendant’s liability is greater than 50 percent ✓ Yes, if defendant’s liability for toxic tort or release of hazardous or harmful substance is equal to or greater than 15 percent
CASE LAW	<u>Topic:</u>	<u>Case and Synopsis:</u>
	Occurrence/ Intentional Conduct	<p><i>Mid-Century Ins. v. Lindsey</i>, 997 S.W.2d 153 (Tex. 1999) (“accident” is injury not reasonably anticipated by insured); <i>King v. Dallas Fire Ins. Co.</i>, 85 S.W.3d 185 (Tex. 2002) (“occurrence” from perspective of the insured, not the tortfeasor)</p> <p><i>Federated Mut. Ins. Co. v. Grapevine Excavation, Inc.</i>, 197 F.3d 720 (5th Cir. 1999) (faulty workmanship claim under theory of breach of contract/warranty is an “occurrence” if negligent act of the insured causes damage that is “undesigned” and “unexpected”); <i>Lamar Homes, Inc. v. Mid-Continent Cas. Co.</i>, 428 F.3d 193 (5th Cir. 2005) (question certified to Texas Supreme Court)</p>
	Punitive Damages	<p><i>Westchester Fire Ins. Co. v. Admiral Ins. Co.</i>, 152 S.W.3d 172 (Tex. App.— Ft. Worth 2004, pet. filed) (insurance coverage for punitive damages based on gross negligence finding not against public policy); <i>Philadelphia Ind. Ins. Co. v. Stebbins Five Cos.</i>, Civil Action No. 3:02-CV-1279-N (N.D. Tex. 2004) (same); <i>Fairfield Ins. Co. v. Stephens Martin Paving, LP</i>, 381 F.3d 435 (5th Cir. 2004) (question certified to Texas Supreme Court - decision pending)</p>
Additional Insured	<p><i>McCarthy Bros. v. Continental Lloyds Ins. Co.</i>, 7 S.W.2d 725 (Tex. App.— Austin 1999, no pet.) (Texas follows majority view that additional insured is covered if there is a causal connection between injury and the named insured’s performance of work for additional insured)</p>	

The information provided is intended to serve as a guide only and may change or vary depending on the specific fact, allegations and circumstances of each case and/or changes in the law by Texas state and federal courts and the legislature. The content of this guide is intended as an example only and should not be construed as or relied upon as legal advice. © 2005 Macdonald Devin, P.C.