



Report and Analysis by  
Associate, Todd Hermes

# NewsFlash

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## Lamar Homes v. Mid-Continent Casualty Company<sup>1</sup>

### AN INSURER'S DUTY TO DEFEND A CONTRACTOR FOR THE CONTRACTOR'S NEGLIGENT CONSTRUCTION AND POTENTIAL LIABILITY UNDER THE TEXAS PROMPT PAYMENT STATUTE

On August 31, 2007, the Texas Supreme Court issued its opinion in *Lamar Homes, Inc. v. Mid-Continent Casualty Company*, Cause No. 05-0832. Vincent and Janice DiMare sued Lamar Homes and its subcontractors (hereinafter "Lamar Homes") alleging that Lamar Homes defectively constructed the DiMare's home. Lamar Homes purchased a Commercial General Liability Policy (CGL) from Mid-Continent Casualty to insure the construction of the DiMare's home. Lamar Homes tendered its defense to Mid-Continent, but Mid-Continent refused to accept defense of the claim because it felt that the policy did not cover damages to the DiMare's home due to defective construction that did not result in other property damage or bodily injury. Lamar Homes sued Mid-Continent in District Court in Travis County to determine if Mid-Continent had a duty to defend and indemnify them, and if the prompt payment statute applied. Mid-Continent removed the case to Federal Court, which granted Mid-Continent's Motion for Summary Judgment, ruling that the CGL policy did not impose a duty to defend. Lamar Homes appealed the decision to the Fifth Circuit, which then certified the case to the Texas Supreme Court since the case involved unresolved issues of state law.

In Texas, an insurer may have a duty to defend a general contractor who is sued for damages pursuant to a CGL policy. If the insurer breaches that duty, they will be liable under the Texas prompt payment statute. The Texas prompt payment statute provides for the recovery of additional damages when an insurer wrongfully refuses or delays payment of a claim.

The Texas Supreme Court held the CGL policy triggered Mid-Continent's duty to defend Lamar against the claim. Per the Court, an insured's faulty workmanship may constitute an "occurrence" when property damage results because of the insured's negligent behavior. The Court further found that Mid-Continent both breached their duty to defend and violated Texas' prompt payment statute; therefore, Mid-Continent is liable for Lamar Homes' economic damages, plus interest and attorneys' fees. The Court did not reach the issue on the duty to indemnify, as that issue will be resolved at trial.

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#### *CASE NOTES:*

<sup>1</sup>This opinion has not yet been released for publication. Cause No. 05-0832, 2007 WL 2459193

*This article is not intended as legal advice to a specific problem or issue. If you have a question about commercial law, please contact the Powers & Frost attorney with whom you work or Andrea Johnson, Partner, Head of Employment and Commercial Litigation Section.*

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