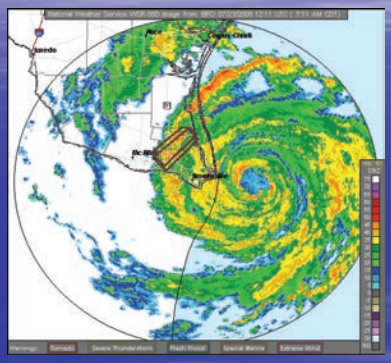
Insurance Update 2018



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Insurance Update 2018

- **Editor in Chief of *The Journal of Texas Insurance Law* (2013-2016).**
- **Chair Elect, Insurance Law Section, State Bar of Texas.**
- **Over 25 years handling water damage insurance claims.**
- **Author:** "Coverage for Ensuing Water Damage under Texas Property Insurance Policies," *South Texas Law Review* 46, no. 4 (Summer 2005) 1247-1281.
- **Executive Director, Texas Center for Legal Ethics [2007-2009].**

CONDITIONS

- Separately listed as such
- Require action by insured
- Are waivable
- Are excusable
- Substantial compliance
- Abatement = remedy

EXCLUSIONS

- Were waivable in liability policies under *Tilley* and "the *Wilkinson* Exception"
- "it follows from these general principles that, if an insurer assumes the insured's defense without obtaining a reservation of rights or a non-waiver agreement and with knowledge of the facts indicating noncoverage, all policy defenses, including those of noncoverage, are waived, or the insurer may be estopped from raising them."
- *Texas County Mutual Insurance Co. v. Wilkinson,* 601 S.W.2d 520 @ 523 (Tex.Civ.App.-Austin 1980, writ ref'd n.r.e.)

New Rule

- "We do not agree with *Wilkinson's* statement to the effect that " noncoverage" of a risk is the type of right an insurer can waive and thereby effect coverage for a risk not contractually assumed…the insured bears the burden to show that a policy is in force and that the risk comes within the policy's coverage. An insurer's actions can result in it being estopped from refusing to make its insured whole for prejudice the insured suffers because the insurer assumed the insured's defense, but estoppel does not work to create a new insurance contract that covers a risk not agreed to by the contracting parties." *Ulico Cas. Co. v. Allied Pilots Assoc.*, 262 S.W.3d. 773 (Tex. 2008).

Even Newer Rule

- ***USAA Texas Lloyds Co. v. Menchaca***, 61 Tex. Sup. Ct. J. 743, 2018 WL 1866041 (Tex. April 13, 2018):

Waiver and Estoppel: "Waiver and estoppel cannot be used to re-write a policy so that it provides coverage it did not originally provide. But if an insurer's statutory violations prejudice the insured, the ***insurer may be estopped from denying benefits that would be payable under its policy as if the risk had been covered***. Under such circumstances, the insured may recover 'any damages it sustains because of the insurer's actions,' even though the policy does not cover the loss."

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Also available as part of the eCourse
Insurance Law Update

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"The Storm Has Not Subsided: Insurance Law Update"