

## We've Got You Covered



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## INSURANCE LAW UPDATE

The University of Texas School of Law  
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## THE CASES

- ✦ *U.S. Metals, Inc. v. Liberty Mutual Group, Inc.*, 2014 WL 4652892 (5<sup>th</sup> Cir. Sept. 19, 2014) (certified questions to Supreme Court of Texas)
- ✦ *Dallas National Ins. Co. v. Calitex Corp.*, 458 S.W.3d 210 (Tex. App.—Dallas 2015, no pet.)
- ✦ *Lend Lease (US) Construction, Inc. v. Amerisure Mutual Insurance Co.*, Cause No. 4:13-CV-03552, \_\_ WL \_\_ (S.D. Tex. June 16, 2015)
- ✦ *Stone Creek Custom Homes, LP. v. Mid-Continent Casualty Co.*, Cause No. SA-14-CA-1115, \_\_ WL \_\_ (W.D. Tex. July 7, 2015)

**U.S. METALS, INC. V. LIBERTY MUT. GROUP. INC.,  
2014 WL 4652892 (5TH CIR. SEPT. 19. 2014)**

**U.S. METALS V. LIBERTY MUTUAL**

- ✘ Exxon contracted with U.S. Metals to manufacture and sell to Exxon weld-neck flanges.
- ✘ The flanges were “irreversibly incorporated” into NRD facilities by welding and bolting the flanges into unit pipes.
- ✘ Exxon discovered a leak in one of the installed flanges and subsequent investigation revealed that the flanges had been improperly manufactured against ASTM standards.
- ✘ Exxon replaced all the flanges.

## ***U.S. METALS V. LIBERTY MUTUAL***

- ✘ Liberty Mutual disclaimed coverage based on the “your product” exclusion and “impaired property” exclusion.
- ✘ District court ruled for Liberty Mutual.
- ✘ Fifth Circuit determined that the issues before it turned on two questions of law that have not been directly addressed: (i) whether the term “physical injury” and “replacement” found in the “your product” and “impaired property” exclusions are ambiguous; and (ii) if not, what do these terms mean pursuant to Texas law?

## ***U.S. METALS V. LIBERTY MUTUAL***

- ✘ Question 1: In the “your product” and “impaired property” exclusions, are the terms “physical injury” and/or “replacement” ambiguous?

### **k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

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