



## **NEW TEXAS COVERAGE CASE ALERT – SEPTEMBER 3, 2010**

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### **“Theft” Does Not Require Removal from the Premises; Does Require Showing that Criminal Intended to Deprive Owner, However**

As part of our service to our clients, we periodically send out advisories concerning important issues in the insurance arena.

Many property coverage forms distinguish between vandalism and theft claims for coverage purposes. As a recent Texas case shows, knowing what is required to be shown for each can be dispositive on coverage. In *Nautilus Ins. Co. v. Steinberg*, \_\_\_ S.W.3d \_\_\_, 2010 WL 2636141 (Tex. App.—Dallas 2010) the policy covered “vandalism” as “willful and malicious damage to, or destruction of” the covered property, but excluded “theft,” which was undefined. A criminal climbed on the roof of the insured commercial building and removed copper pipes and wiring from the a/c units but was confronted by police and arrested while still on the roof and before getting away with them. He pled guilty to a lesser charge of criminal mischief and was not convicted of theft. The copper pipes were found lying on the roof. Nautilus denied the claim under the “theft” exclusion. The insured owner sued.

The trial court ruled that since the culprit had never removed the copper pipes from the roof, there was no theft and the exclusion did not apply. Nautilus appealed. On appeal, the Court of Appeals held that since “theft” was not defined, it would be given the same meaning as in the criminal statute and, thus, all that was required was that the thief exercise control over the owner’s property with intent to deprive the owner of its possession, enjoyment or use. **The Court held that theft did not require that the property be removed from the premises and that the culprit’s removal of the pipes from their customary location, however slight, was enough.** Accordingly, the Trial Court erred in requiring that the pipes be removed from the premises. **However, the Court also held that Nautilus had not presented any evidence of the culprit’s intent to deprive the owner of the pipes and the Trial Court had not made any findings on intent in light of the Court’s erroneous ruling on removal from the premises being required.** Accordingly, the Court of Appeals remanded the case to the Trial Court for further findings in that regard.

This case highlights the importance of making sure that you have evidence to support the characterization of a loss as “theft” or “vandalism” and that, depending on the coverage form language involved, to distinguish between claims that may be one but not the other.

If you want a copy of the decision or wish to discuss these issues further or as applied to a specific actual claim, contact Schubert & Evans, P.C. at 214-744-4400.