

house), a garage, and a barn. In late 1992, Ballard began insuring the house with FIE.

Hotel in Austin, which FIE agreed to pay for until a more permanent location was found. Ballard and her family moved out of the Four Seasons and into a rental home around June 1.

property damage claim. The district court denied the motion to transfer venue in November 1999. FIE later sought to exclude Ronald Allison's personal injury claims on the ground that the toxic effects of mold were not sufficiently established in the scientific community. Just before trial, the district court excluded Allison's claims on the basis that his expert witnesses did not have reliable epidemiological studies about the health effects of exposure to mold.

"The court in discharging its duty as gatekeeper must determine how the reliability of particular testimony is to be assessed." *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 726 (Tex. 1998). In *Robinson*, the Texas Supreme Court recognized several nonexclusive factors enumerated by the court in *Daubert* to guide trial courts in acting as gatekeepers to assess the reliability of scientific expert testimony:

- the extent to which the theory has been or can be tested;
- the extent to which the technique relies upon the subjective interpretation of the expert;
- whether the theory has been subjected to peer review

Robinson, 923 S.W.2d at 558. The test is not whether the facts present an appropriate case for the trial court's action in the opinion of the reviewing court. *Id.* Rather, we will gauge an abuse of discretion by whether the trial court acted without reference to any guiding rules or principles. *Id.* Thus, a trial court enjoys wide latitude in determining whether expert testimony is admissible.

this extent: If we find the m

Tex. Civ. Prac. & Rem. Code Ann. § 15.011. That the word "action" must be read to modify each of these is clear beyond cavil. Thus, we must look to the "true" nature of the action to determine whether the mandatory venue provision applies. *Renwar Oil Corp. v. Lancaster*

FIE next contends in several issues that the evidence is legally and factually insufficient to support the jury's findings. We will first address the standards of review for challenges

even though McConnell "secretly" thought that there might be other leaks. In December 1998, Ballard reported a claim that her hardwood floor was water-damaged. FIE retained the Gerloff Company, a plumbing contractor, to determine whether there was an ongoing leak causing the floor to remain wet. On January 11, 1999, McConnell

thought the Boatright bid was too low. Thereafter, Ballard began submitting other claims. Within the next couple of months, she submitted a claim for a shower leak, ice maker leak, and supplemental damage to sheet rock and walls. FIE paid all of these

like kind and quality rep

rejecting an increase in coverage. The amount of insurance on the home when Ballard filed the hardwood damage claim was

The issue of the breach of the duty of good faith and fair dealing "focuses not on whether the claim was valid but on the reasonableness of the insurer's conduct" in handling the claim.

runs through underground systems only, not any pipes above the first floor. Although McConnell correctly characterized the test that Gerloff performed, the jury could have reasonably concluded that this statement was a misrepresentation.

Other evidence called into question FIE's good faith handling of the claims. Ballard testified that although she "begged" to remove the wood floor because it was a tripping hazard, McConnell told her that she would "jeopardize coverage" if she removed the floor. McConnell told

Viewing the evidence in the light most favorable to Ballard, we hold that there is some evidence to support the jury's finding that FIE failed to attempt in good faith to effectuate

Indep. Sch. Dist., 877 S.W.2d 872, 875 (Tex. App.--San Antonio 1994, no writ). An award may be set aside in three instances: when it was (1) made without authority; (2) the result of fraud, accident, or mistake; or (3) not made in substantial compliance with

issue of estoppel, Tex. R. Civ. P. 94, which FIE did in an amended answer. Ballard has

Ballard attempted to prove lack of competence on the ground that de la Mora had no experience with molds or mold remediation. The evidence shows, however, that de la Mora was competent as an appraiser. He has a degree in civil engineering, is a registered professional engineer, has thirty-three years of experience in structural

that is, that FIE was more than consciously indifferent to Ballard's rights and welfare.
Under the *St. Paul Surplus*

relationship with FIE in his depositio

Having found no evidence of a knowing violation, we must reverse the jury's awards of punitive damages and mental anguish damages. We therefore need not address FIE's eighth and ninth issues that the evidence is legally and factually insufficient to support these findings. We render judgment that Ballard take nothing on her claims for punitive

FIE contends in its fifth issue that the district court abused its discretion and deprived FIE of a fair trial by excluding evidence of settlement offers made during mediation, some instances of Ballard's conduct toward FE's adjusters, and de la Mora's testimony that Ballard's lawyers delayed the appraisal process. FIE further argues that the district

Dist.] 1993, orig. proceeding); *State Farm Mut. Auto. Ins. Co. v. Wilborn*, 835 S.W.2d 260 (Tex. App.--Houston [14th Dist.] 1992, orig. proceeding). In both cases, because the entire basis of the claim was the amount of the insurance company's settlement offer, it was necessary for the court to admit settlement negotiation evidence. Here, although the district court could have admitted evidence of Ballard's demands at mediation for the purpose of countering her contention that FIE unduly delayed in paying her claims, see Tex. R. Evid. 408, he excluded the evidence because of the

excluding certain evidence of Ballard's interaction with FIE's adjusters. More

in place by twice instructing the jury that personal injury claims were not part of the case. The general rule is that an instruction to disregard a subject not part of the case

rule 1.04, the jury has no meaningful way to determine if the fees were in fact reasonable and necessary." *Id.* at 818-19. Th

settlement of a claim when the insurer's liability has become reasonably clear." Tex. Ins. Code Ann. art. 21.21, §

finding of a knowing violation is required to uphold punitive and mental anguish damages, we reverse the jury's awards for these damages and render judgment that Ballard take nothing for punitive and mental anguish damages. We uphold the district court's award of the article 21.55 statutory penalty in part and remand the penalty for recalculation in accordance with this opinion. We find sufficient evidence to support the award of attorneys' fees but cannot say that the amount of the award is reasonable, given our significant reduction of the jury's damages awards. Therefore, we remand the issue of attorneys' fees to the district court for further proceedings consistent with this opinion.

Jan P. Patterson, Justice

Before Chief Justice Aboussie, Justices Patterson and Puryear

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