

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

March 7, 2008

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No. 07-40180  
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Charles R. Fulbruge III  
Clerk

JOHN SAILER; MARILYN SAILER

Plaintiffs - Appellants

v.

STATE FARM LLOYDS

Defendant - Appellee

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:02-CV-247  
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Before REAVLEY, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:\*

John and Marilyn Sailer appeal from the district court's ruling on summary judgment that their Texas homeowner's policy does not provide coverage for mold damage to their dwelling that arises from an accidental discharge of water. The Sailers argue that the mold exclusion found in their policy is not applicable because of an "exclusion repeal" provision. They rely on the Texas Supreme Court's decision in *Balandran v. Safeco Ins. Co. of Am.*, 972 S.W.2d 738 (Tex. 1998). We have previously addressed this identical issue,

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

concluding that Balandran is inapplicable and that mold damage to the dwelling is not covered under the policy language at issue here. See *Carrizales v. State Farm Lloyds*, --- F.3d ----, 2008 WL 467097 at \*2–4 (5th Cir. Feb. 22, 2008). The Sailers' arguments are thus foreclosed by our precedent.

AFFIRMED.