

# RECENT DEVELOPMENTS

## INSURANCE

### **INSURED MAY NOT PREVAIL ON CLAIMS UNDER §541 OF THE TEXAS INSURANCE CODE OR THE TEXAS DTPA IF THE COURT CONCLUDES THAT THE INSURED HAS NO CAUSE OF ACTION FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING.**

Thomison v. Meridian Sec. Ins. Co., \_\_\_ F. Supp. 3d \_\_\_ (W.D. Tex. 2024).

<https://casetext.com/case/thomison-v-meridian-sec-ins-co>

**FACTS:** Plaintiffs Don and Jessica Thomison (“Plaintiffs”) filed suit against Defendant Meridian Security Insurance Company (“Defendant”) following a dispute regarding their homeowners insurance policy. The policy covered specific damages such as hail but excluded damages that are cosmetic, mechanical, due to wear and tear, and latent defects. Plaintiffs reported a water leak in their kitchen, attempted to repair it, and submitted a claim for hail damage to recover interior repair costs caused by a hailstorm. Defendant received the claim and had the home inspected. After reviewing the inspection findings, Defendant sent Plaintiffs a letter detailing what it would cover.

Plaintiffs disagreed with the coverage determination and filed suit. They asserted claims for violation of the Texas Prompt Payment Act, breach of duty of good faith and fair dealing, and violation of the Texas Deceptive Trade Practices Act (“DTPA”). Defendant filed a motion for summary judgment on all claims.

**HOLDING:** Granted.

**REASONING:** Defendant argued that it is entitled to summary judgment on the bad faith cause of action because the evidence

**They asserted claims for violation of the Texas Prompt Payment Act, breach of duty of good faith and fair dealing, and violation of the Texas Deceptive Trade Practices Act (“DTPA”).**

displays a bona fide dispute over coverage, which precludes a bad faith cause of action. Plaintiffs responded, stating that Defendant could not avoid liability for bad faith because it hired expert reports to support the insurance claim. The

law requires Defendant to produce evidence that shows it had a reasonable basis for denying or delaying payments on the Plaintiffs’ coverage claim and that there was a bona fide dispute as to coverage.

The evidence produced by Defendant showed that Plaintiffs submitted their claim a year after the hailstorm in question, and the delayed submission created a reasonable need for an inspection to determine the cause and timing of the property damage. Therefore, because the court found that Defendant had a reasonable basis for the denial, it determined that the violation of §541 of the Texas Insurance Code and the DTPA claims were precluded. An insured cannot prevail on claims under §541 of the Texas Insurance Code or the DTPA if the court concludes there

is no cause of action for breach of the duty of good faith and fair dealing, according to *Higginbotham*.

Because the court concluded as a matter of law that Defendant had a reasonable basis for the delay and denial of Plaintiffs’ insurance claim, the cause of action for violation of §541 of the Texas Insurance Code and the claim for violation of the Texas DTPA are precluded.

### **IN THE ABSENCE OF SOME SPECIFIC MISREPRESENTATION BY THE INSURER OR AGENT ABOUT THE INSURANCE, A POLICYHOLDER’S MISTAKEN BELIEF ABOUT THE SCOPE OR AVAILABILITY OF COVERAGE IS GENERALLY NOT ACTIONABLE UNDER THE DTPA OR THE TEXAS INSURANCE CODE.**

Harding v. State Farm Lloyds, \_\_\_ F. Supp. 3d \_\_\_ (S.D. Tex. 2024).

<https://casetext.com/case/harding-v-state-farm-lloyds>

**FACTS:** In 2021, Plaintiff Travis Harding (“Harding”) filed a claim with insurer, Defendant State Farm Lloyds (“State Farm”) after suffering serious water damage. State Farm performed an inspection of the home and Harding had a public adjuster assess the damage to the property to manage logistics connected to the insurance claim. In addition to the estimated damages costs, another request to State Farm of additional living expenses was added in connection to hotel costs when the home was uninhabitable and for undergoing repairs related to covered loss. Following this, State Farm made a second payment for any discrepancy in the estimates and paid Harding for additional mitigation costs. Harding then hired a mold and environmental assessment company which found the home to be uninhabitable.

Harding brought suit against State Farm alleging breach of contract and extracontractual claims. State Farm filed a Motion for Summary Judgment.

**HOLDING:** Motion for Summary Judgment Granted in Part and Denied in Part.

**REASONING:** Harding argued a breach of contract occurred when Harding was not fully compensated under his insurance policy. In addition to the breach of contract, Harding alleged State Farm violated five provisions of the DTPA because State Farm represented to Harding that the Policy and State Farm’s adjusting and investigative services had characteristics of benefits that they did not truly have. State Farm argued that the amounts of compensation were proper according to the insurance policy and provided for the reasoning with expert testimonies. Without specific misrepresentation by the insurer or agent about the insurance, a policyholder’s mistaken belief about the scope or availability of coverage is not generally actionable under the DTPA or the Texas Insurance Code according to *Moore v. Whitney-Vaky Ins.* The court explained, because Harding failed to state any factual allegations in the pleading and in the brief, State Farm is entitled to summary judgment on the DTPA claims.

Harding further asserted claims under the Texas Prompt Payment of Claims Act (TPPCA) which granted additional damages where an insurer failed to meet certain deadlines in ac-

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knowledging, investigating, deciding, or paying a claim. Harding asserted two theories under the TPPCA for when State Farm allegedly delayed investigating Harding's claim and when State Farm delayed in paying the claim.

The court held that State Farm commenced its investigation within the fifteen-day period required under the Texas Insurance Code §542.055. Because Harding failed to provide evidence that State Farm did not perform within the statute's timeframe and failed to provide any evidence of the delay in investigating the claim, State Farm is entitled to summary judgment on the delay-in-investigation theory. Under the delay-in-payment theory, the insurer is required to issue payment within sixty days of receiving all items, statements, and forms reasonably requested in compliance with the Texas Insurance Code §542.058(a). Here, there is a genuine dispute of fact about whether the payment was the full amount owed under the policy, and therefore, the court denied summary judgment under this theory.

Harding's claims of violations under the Texas Insurance Code §§541.060 and 541.061 were classified as non-meritorious by the court. Because Harding did not identify any specific material misrepresentations made by State Farm, the absence of such misrepresentations makes the claim not actionable under the DTPA and the Insurance Code. Therefore, State Farm is entitled to summary judgment on all of Harding's claims under Chapter 541 of the Texas Insurance Code. All claims, except for Harding's breach of contract claim for repair and water remediation costs and the TPPCA delayed payment claim, are dismissed.

## **INSURED'S STATEMENT THAT ALLSTATE DID NOT LIE NEGATES ESSENTIAL ELEMENTS OF THEIR COMMON LAW FRAUD CLAIMS AND CLAIMS UNDER CERTAIN SECTIONS OF THE TEXAS INSURANCE CODE AND DTPA.**

### **STATEMENT DOES NOT NEGATE ESSENTIAL ELEMENTS OF THEIR BAD FAITH CLAIM UNDER TEXAS LAW.**

Nelson v. Allstate Vehicle & Prop. Ins. Co., \_\_\_ F. Supp. 3d \_\_\_ (S.D. Tex. 2024).

<https://law.justia.com/cases/federal/district-courts/texas/txsdce/4:2023cv01793/1917770/22/>

**FACTS:** Abrian and Rose Nelson ("Plaintiffs") submitted a claim to Allstate Vehicle and Property Insurance Company ("Defendant") for roof damage caused by a 2022 hailstorm. Defendant denied the claim after conducting an inspection, which Plaintiffs alleged was inadequate and wrongful. Plaintiffs also claimed that Defendant, influenced by McKinsey & Company, designed its claims process to maximize profits at the expense of policyholders. Plaintiffs brought suit, asserting claims of common law fraud, fraud by nondisclosure, fraud in the sale of an insurance policy, and violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act ("DTPA"). Plaintiffs also asserted a bad faith claim under Texas law asserting that Defendant did not have a reasonable basis for denying their claim and that the denial was done in bad faith.

**HOLDING:** Granted in part; denied in part.

**REASONING:** The court held that Plaintiffs' deposition state-

ments that Defendant did not "lie" to them were judicial admissions that negated the essential elements of their common law fraud claims and claims under certain sections of the Texas Insurance Code and DTPA. These claims required proof of a material misrepresentation, which was undermined by Plaintiffs' statements. As a result, the court granted summary judgment in favor of Defendant on these claims.

The court further held that Plaintiffs' deposition statements that Defendant did not "lie" to them did not negate the essential elements of their bad faith claim. Under Texas law, a bad faith claim does not require proof of misrepresentation. Instead, it focuses on whether the insurer had a reasonable basis for denying or delaying payment of a claim. The court found that the Plaintiffs' statements did not preclude their bad faith claim, allowing it to proceed.

## **INSURER BEARS THE BURDEN TO PROVE DAMAGE FELL WITHIN THE POLICY EXCLUSION**

Abulehieh v. State Farm Lloyds, \_\_\_ F. Supp. 3d \_\_\_ (W.D. Tex. 2024).

<https://casetext.com/case/abulehieh-v-state-farm-lloyds-1>

**FACTS:** Defendant State Farm Lloyds ("State Farm") issued a policy insuring Plaintiff Abulehieh's dwelling. Abulehieh contacted State Farm to report a leak that had caused damage to his house. Later that day, a plumber identified the source of the leak as a broken toilet flange. After reviewing photos and supporting documentation, State Farm concluded that the damage was due to continuous and repeated seepage or leakage, which was not covered under the policy. Section I of the policy covers "accidental direct physical loss" to property but excludes coverage for damage caused by or resulting from continuous water or sewage leakage. State Farm supported its determination with additional images and the presence of mold, indicating a continuous leak rather than a sudden and accidental one. Abulehieh subsequently filed a lawsuit against State Farm for denying his insurance claim for damages.

Abulehieh alleged breach of contract, and State Farm moved for summary judgment on the claim.

**HOLDING:** Denied.

**REASONING:** Abulehieh argued that State Farm breached the policy by refusing to pay for covered damage. Under Texas law, once an insured proves that coverage exists, the insurer bears the burden of proving that an exclusion applies to the loss. Policy exclusions are strictly construed against the insurer.

In this case, State Farm failed to meet its burden of proving that the damage fell within the policy exclusion. The court found that State Farm did not present any evidence from an expert or witness with knowledge of plumbing leaks to support its position. Instead, State Farm relied solely on a declaration from a Claims Specialist, whose expertise in plumbing, engineering, or another relevant field was not established. The Claims Specialist's conclusions were based on claim records, plumbing photographs without sufficient explanation, and an affidavit, despite never having physically inspected the property. As a result, the court denied State Farm's motion for summary judgment on the breach of contract claim.