INSURANCE

INSURER'S FULL PAYMENT OF AN APPRAISAL AWARD PLUS INTEREST PRECLUDES AN AWARD OF ATTORNEY'S FEES

Rodriguez v. Safeco Ins. Co. of Ind., 684 S.W.3d 789 (Tex. 2024).
https://casetext.com/case/rodriguez-v-safeco-ins-co-of-ind-2

FACTS: Homeowner Mario Rodriguez ("Rodriguez") filed suit against Safeco Insurance Company of Indiana ("Safeco") following a dispute over coverage for tornado damage to his property. Initially, Safeco issued a payment of $27,449.88, which Rodriguez accepted. However, Rodriguez's counsel later demanded an additional $29,500. After mediation failed, Safeco invoked the appraisal clause in its insurance policy. The appraisal panel determined the damage at $36,514.52, prompting Safeco to pay the balance of $32,447.73, plus an additional $9,458.40 in statutory interest, which Rodriguez accepted as full payment.

Rodriguez pursued claims under Chapter 542A of the Texas Insurance Code for attorney's fees. Safeco moved for summary judgment, asserting that full payment of the appraisal award and statutory interest extinguished its liability, including for attorney's fees. The district court granted Safeco's motion. Rodriguez appealed.

HOLDING: Affirmed.

REASONING: Rodriguez argued Safeco's payments did not preclude his recovery. The court disagreed. The court explained that the plain language of Texas Insurance Code § 542A.007 prohibits attorney's fees when no monetary judgment is awarded under the policy. Section 542A.007(a)(3) bases attorney's fees on a mathematical calculation involving the judgment amount. Since Safeco fully discharged its obligations by paying the appraisal award and statutory interest, no judgment could exist, resulting in a calculation of zero attorney's fees.

Texas Insurance Code § 542A.007 prohibits attorney's fees when no monetary judgment is awarded under the policy.

Additionally, § 542A.007(c) explicitly bars attorney's fees when the calculated amount is less than 0.2. This statutory framework, combined with prior case law such as *Ortiz v. State Farm Lloyds*, confirmed that payment of the appraisal award resolves liability under the insurance policy. The court emphasized its adherence to the statute's plain meaning and rejected speculative interpretations regarding legislative intent.

Ultimately, the court acknowledged concerns about potential insurer abuse but clarified that any remedy lies with the Legislature, not judicial reinterpretation. The court accordingly affirmed and held that Safeco's full payment precluded Rodriguez from recovering attorney's fees.

UNDERWRITER DID NOT WAIVE ITS APPRAISAL RIGHT WHEN IT DENIED INSURED'S CLAIM BECAUSE THE POLICY UNEQUIVOCALLY STATED THAT WAIVER WAS REQUIRED TO BE IN WRITING

In re SureChoice Underwriters Reciprocal Exchange, ___ S.W.3d ___ (Tex. App. 2024).
https://casetext.com/case/in-re-surechoice-underwriters-reciprocal-exch-1

FACTS: Plaintiff Nicole Glasper ("Glasper") filed suit against Defendant SureChoice ("SureChoice") over its handling of her property damage insurance claim. Glasper held a policy with SureChoice that included an appraisal clause which stated that if both parties fail to agree on the amount of loss, either party may demand an appraisal of the loss. Both SureChoice's adjuster and Glasper's adjuster came to vastly different values for the repair costs of her property. Glasper then sent a demand letter for full payment of her adjuster's estimate. When SureChoice refused, Glasper filed suit.

In response, SureChoice sent a letter to Glasper invoking and demanding appraisal under the insurance policy. SureChoice additionally filed their answer and an Opposed Motion to Compel Appraisal and Abate, requesting the trial court compel appraisal and abate the lawsuit until after completion of the appraisal process. Glasper filed a response, arguing SureChoice waived their right to invoke an appraisal because they failed to do so within the 60-day statutory notice following her demand letter. The trial court denied SureChoice's Motion to Compel Appraisal and SureChoice filed a writ of mandamus.

HOLDING: Granted.

REASONING: The court held that SureChoice did not waive its right to invoke an appraisal because a waiver requires intent, either expressly or by intentional conduct that is inconsistent with claiming the right. For a waiver of the right to invoke an appraisal to occur the acts relied on must amount to a denial of liability, or a refusal to pay the loss. In this case, the insurance policy contained a provision that stated that any waiver or change to a provision of the policy must be made in writing by SureChoice to be valid.

Although Glasper argued that SureChoice's denial of her claim constituted a waiver of its appraisal rights, the court disagreed. The court explained that SureChoice acknowledged that the insurance policy covered part of the loss, but that it denied Glasper's claim because the amount fell below the policy's deductible. Therefore, SureChoice's denial was not based solely on a lack of liability or refusal to pay but was also partially because of causation.

Glasper further contended that SureChoice waived its right to an appraisal because the parties reached an impasse after SureChoice denied Glasper's demand letter. However, the court concluded that SureChoice's response to the letter did not create an impasse but instead invited Glasper to provide evidence to substantiate her damages. Because there was no evidence to show that SureChoice expressly waived their right to an appraisal, the court granted SureChoice's Motion to Compel Appraisal.

DTPA AND INSURANCE CODE CLAIM BARRED BY LIMITATIONS

Galvan v. RVOS Farm Mut. Ins. Co., ___ S.W. 3d ___ (Tex. App.—Corpus Christi 2024, no pet. h.).
https://casetext.com/case/galvan-v-rvos-farm-mut-ins-co-2

FACTS: Appellee Jessica Galvan ("Galvan") held a homeowner's insurance policy with RVOS Farm Mutual Insurance Company ("RVOS"). Galvan's house was damaged by Hurricane Harvey on August 29, 2017, so she filed a claim with RVOS. Unsatisfied with RVOS's initial assessment, Galvan's counsel sent a demand letter on February 19, 2019, alleging that RVOS's adjuster had inadequately inspected her property, resulting in a significant discrepancy between RVOS's loss estimate and her expert's. This was claimed to violate both the Texas Insurance Code and the Deceptive Trade Practices Act (DTPA). Galvan sued RVOS on March 28, 2019, and filed an amended petition on May 8, 2019. Galvan filed a new suit in district court on July 6, 2023, alleging breach of contract and violations of the DTPA and Insurance Code. RVOS moved for summary judgement on the grounds that Galvan's suit was barred by a contractual limitations provision. On October 31, 2023, the trial court granted RVOS's summary judgement motion and Galvan appealed.
HOLDING: Affirmed.
REASONING: Galvan argued that her policy stated "no suit or action can be brought unless the policy provisions have been complied with." "Action brought against us must be started within two years and one day after the cause of action accrues." The court rejected this argument, holding that Galvan's claims accrued no later than February 27, 2018, when RVOS notified her of the initial decision regarding the loss amount, and Galvan was aware that RVOS's conclusion was "substantially different" from her independent estimate. RVOS argued that Galvan's claims accrued when the letter was sent to her counsel because that letter notified her that some of her claim was denied, and that the payment was less than she sought. RVOS further argued that even if the contractual limitations provision does not apply, the DTPA and insurance code also contain two-year limitations provisions. As such, both her DTPA and Insurance Code claims were subject to a two-year limitations period

"Action brought against us must be started within two years and one day after the cause of action accrues."

The court concluded that all of Galvan's claims derived from RVOS's initial decision regarding her amount of loss and since Galvan filed her district court suit more than two years later, her claims were barred by limitations. Galvan was advised of that decision on February 27, 2018, and Galvan was aware that RVOS's conclusion was substantially different from her own on February 19, 2019. Thus, no legal injury was suffered past February 19, 2019. The court concluded that RVOS established its entitlement to judgment as a matter of law, and Galvan failed to raise a material fact issue regarding the limitations defense.

PLAINTIFF FAILED TO RAISE A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER THE ALLEGED DAMAGE OCCURRED DURING THE COVERAGE PERIOD OF THE INSURANCE POLICY

Espinoza v. State Farm Lloyds, ___ F. Supp. 3d ___ (W.D. Tex. 2024).
https://www.propertyinsurancecoveragelaw.com/wp-content/uploads/2024/09/Texas-Hail-Case-With-No-Damage-on-Date-of-Loss.pdf

FACTS: Plaintiff David Espinoza ("Espinoza") purchased a homeowner's insurance policy from Defendant State Farm Lloyd ("State Farm") for his home. Espinoza alleged that during the term of coverage his home sustained extensive damage from a hail and wind storm. Espinoza submitted an insurance claim to State Farm almost a year later, and State Farm sent a representative to inspect the home in connection to the claim. The State Farm inspector found that the storm damaged a single roof shingle but did not cause damage as submitted in the claim for the main dwelling roof and exterior gutters and downspouts.. The inspector estimated the roof shingle damage at $580.25 at replacement cost value, which fell below Espinoza's deductible of $3,650. Nearly two years later, Espinoza sent State Farm a claim letter which stated that the storm caused $51,400.76 in damage to Espinoza's home according to an inspector Espinoza hired. Two months later, Espinoza sent State Farm another letter alleging the storm resulted in $62,643.32 of damages to his home. State Farm refused to pay citing its own damages estimate based on its inspection.

Espinoza claimed breach of contract, non-compliance with the Texas Insurance Code breach of duty of good faith and fair dealing, and several violations of the Texas Deceptive Trade Practices Act. Espinoza requested actual damages for $62,642.32, as well as additional damages. State Farm moved for summary judgment on all of Plaintiff's claims.
HOLDING: Granted.
REASONING: Espinoza argued State Farm must pay for the storm damages and related fees to all of Espinoza's insurance claims as supported by their inspector. State Farm argued that Espinoza cannot prove that all of the damages in his claim as required by the concurrent cause doctrine. For an insurance company to be liable for breach of contract, the insured party must show that its claim falls within the insuring agreement policy. Texas courts recognize the concurrent cause doctrine which requires that "the insured is entitled to recover only that portion of the damage caused solely by the covered perils." If an insured party cannot provide evidence that a jury or court can use to allocate damages between those that resulted from covered perils and those that did not, the insured party's claim fails.

State Farm's inspector documented how the pre-existing damages pre-dated the insurance coverage period and Espinoza's inspection did not provide sufficient evidence to negate State Farm's claims. Because State Farm made its initial showing that there is no evidence to support Espinoza's breach of contract claim, Espinoza had to show competent summary judgment evidence of the existence of a genuine fact issue to overcome State Farm's motion. Espinoza did not amend his complaint when evidence proved the potential damaging storm occurred on a dif-

ferent day and therefore Espinoza did not present evidence to establish there were any traceable damages to the alleged date. Because Espinoza failed to identify evidence that a jury could use to segregate damages from the alleged date loss and pre-existing damages, the court granted summary judgment on all claims.

PLAINTIFF SUED THE DEFENDANT INSURANCE COMPANY FOR BREACH OF CONTRACT AND EXTRA-CONTRACTUAL CLAIMS

DEFENDANT MOVED TO SEVER THE BREACH OF CONTRACT CLAIM FROM THE EXTRA-CONTRACTUAL CLAIMS

COURT DENIED SEVERANCE BECAUSE DEFENDANT FAILED TO SHOW HOW SEVERING THE FACTUALLY INTERTWINED CLAIMS WOULD PROMOTE CONVENIENCE OR JUDICIAL ECONOMY

Musangu v. State Farm Mut. Auto. Ins. Co., ___ F. Supp. 3d ___ (N.D. Tex. 2024).
https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2024cv01649/391601/17/

FACTS: Plaintiff Benaiah Musangu ("Musangu") was insured by Defendant State Farm Mutual Automobile Insurance Company ("State Farm") at the time of a wreck with an unidentified third-party. Police confirmed the third-party was responsible for the wreck and Musangu's resulting injuries however, the parties could not confirm if the third-party was insured. At the time of the wreck, Musangu had uninsured motorist benefits on his policy with State Farm.

Musangu filed suit against State Farm alleging breach of contract, violations of Texas Insurance Code ("TIC") §542.003 for failing to timely pay his claim, bad faith under TIC §541.060, and knowing violations of the Texas Deceptive Trade Practices Act ("DTPA"). State Farm moved to sever and abate the breach of contract claim from the extra-contractual claims.
HOLDING: Denied.
REASONING: State farm claimed severing and abating the breach of contract claim would promote convenience or judicial economy. The court disagreed. The court treated this motion to sever as one brought under the Federal Rules of Civil Procedure Rule 42(b), which allows a court to sever claims if convenience, prejudice, and expedition and economy favor it.

The court reasoned State Farm failed to show how severing the claims would promote convenience or judicial economy. The breach of contract and extra-contractual claims are factually intertwined, which weighed against severing the claims. The court considered a previous case where a severance and abatement were denied to a defendant-insurer because it would only serve judicial efficiency if the contractual claim were resolved against the plaintiff, effectively disposing of the other claims. In the current case, no judgment was entered against Musangu for his breach of contract claim. As a result, the court held that no convenience nor judicial economy interests would be served by granting State Farm's motion to sever and abate the contractual claims and the extra-contractual claims as they were factually intertwined. The court denied the defendant's unopposed motion to sever and abate the plaintiff's extra-contractual claims from the breach of contract claim.

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

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

Nelson v. Allstate Vehicle & Prop. Ins. Co., 2024 U.S. Dist. LEXIS 133579 (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.

Plaintiffs' deposition statements 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.

HOLDING: Granted in part; denied in part.
REASONING: The court held that Plaintiffs' deposition statements 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.