

## TEXAS INSURANCE LAW NEWSBRIEF

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APPELLATE COURT FINDS FACT ISSUE ON "CAUSATION AND DAMAGES"  
BASED ON APPRAISAL AWARD – TRIAL COURT'S JUDGMENT REVERSED AND  
REMANDED

In a significant decision entered last Thursday, an appellate court in Houston reversed and remanded a trial court's judgment and jury findings based on an appraisal award under an insurance policy, finding that the appraisal award and evidence offered did not conclusively prove "whether and how much alleged loss was caused by a covered peril." In *Texas Windstorm Insurance Association v. Dickinson Independent School District*, 2018 WL 2436924 (Tex.App. – Houston [14<sup>th</sup> Dist.] May 31, 2018), TWIA invoked the appraisal provision to address the amount of property damage claimed by the District following Hurricane Ike and a \$10.8 million damages award was issued. The District then sought partial summary judgments on causation and damages. TWIA opposed the motions asserting that the School District had not conclusively proved that the damages, or any portion of them, were caused by a covered peril under the named peril policy. The trial court ruled in the District's favor and the only issue submitted to the jury was whether TWIA breached the policy by not paying the appraisal award. The jury answered "yes" and the trial court entered a final judgment against TWIA for \$9,602,542.82. This appeal followed.

TWIA challenged the judgment based on four issues, the first of which was determined to be dispositive. In its first issue, TWIA argued that the District failed to conclusively prove damages caused by a covered peril under the policy. Or, that TWIA raised genuine issues of material fact of whether the damages were caused by a named peril under the policy. In its analysis, the court examined arguments asserted by both sides based on the Texas Supreme Court's decision in *State Farm Lloyds v. Johnson*, 290 S.W.3d 886 (Tex. 2009). The court also examined the doctrine of concurrent causes, noting the insured's duty to segregate damages arising from covered and non-covered causes of loss. Here, the policy provided in part, coverage for "direct physical loss to the covered property caused by windstorm" unless excluded. In a detailed analysis of the impact of the appraisal award, the court determined that "[s]tanding alone, the Appraisal Award simply does not provide sufficient evidence from which a court may determine as a matter of law which Appraisal Award damages, if any, were caused by a covered peril." Accordingly, the judgment was reversed and the case remanded for further proceedings.

**Editor's Note:** This case is significant in its effort to clarify the Texas Supreme Court's *State Farm Lloyds v. Johnson* decision and, an insurer's ability to challenge causation following a damage determination through appraisal. We will continue to monitor this significant decision.

FIRE TRUCK OPERATOR'S OFFICIAL IMMUNITY PRECLUDES UNINSURED  
MOTORIST BENEFITS – INSURED NOT "LEGALLY ENTITLED TO RECOVER"

Recently, the Dallas Court of Appeals examined an insured's claim for uninsured motorist benefits following a determination that "official immunity" precluded liability claims against the operator of a fire truck following a collision with the insured vehicle and determined that uninsured motorist coverage was also precluded. In *Loncar v. Progressive County Mutual Ins. Co.*, 2018 WL 2355205 (Tex. App. – Dallas May 24, 2018), the insured vehicle collided with a City of Dallas fire truck that was responding, with lights and siren activated, to a fire alarm call. The insured sued for injuries sustained in the accident and the City filed a plea to the jurisdiction based on immunity. The insured then added claims against his insurers seeking uninsured motorist benefits. The insurers moved for summary judgment arguing that the policy allows recovery only when the insured is "legally entitled to recover" from the uninsured driver. And here, the other driver has "official immunity" which precludes legal liability; therefore the uninsured motorist coverage is likewise precluded. The trial court agreed and granted summary judgment for the insurer. This appeal followed.

The Dallas Court of Appeals examined Texas case law as well as cases from other jurisdictions, addressing statute of limitations issues and other differences between liability assessments and contractual duties. Arguments presented by the insured - focusing on negligence as the cause of the accident, were contrasted by those of the insurer – asserting that coverage applies only when "the insured has a legally enforceable right to recover judgment from the uninsured motor vehicle owner or operator." The court concluded that the policy is unambiguous and the insurer's interpretation is correct. And absent an exception to the official immunity defense, the uninsured motorist coverage did not apply. Summary judgment in favor of the insurer was upheld.