

TEXAS INSURANCE LAW NEWSBRIEF

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ANOTHER TEXAS COURT OF APPEALS AFFIRMS TIMELY PAYMENT OF AN APPRAISAL AWARD PRECLUDES RECOVERY UNDER THE PROMPT PAYMENT OF CLAIMS ACT

Last week, Houston's Fourteenth Court of Appeals issued the latest opinion in a growing body of law confirming that insurance breach of contract and extra-contractual claims suit are essentially over once the carrier pays an appraisal award in a timely manner. In *Marchbanks v. Liberty Ins. Corp.*, No. 14-17-00004-CV, 2018 WL 4016931 (Tex. App. – Houston [14th Dist.] Aug. 23, 2018), the insured presented a claim for storm damage their residence. An adjuster inspected the loss and found the existing roof damage was not storm-related. Over a year later, the insured notified Liberty that he believed his house had sustained covered hail damage. An adjuster conducted a reinspection and found covered damage totaling \$387.79, an amount well below the Policy deductible. Liberty sent a letter to the insured advising no payment would be issued.

The insured filed a lawsuit asserting breach-of-contract claim, common-law bad faith, violations of the Texas Deceptive Trade Practices Act, and claims under the Prompt Payment of Claims Act. Liberty then invoked the appraisal provision under the Policy. The appraisers issued an appraisal award and Liberty sent a check to the insured along with an explanation of the amount paid under the Policy based on the appraisal award. Liberty then filed a traditional motion for summary judgment on all claims arguing that its payment of the appraisal award discharged its obligations under the Policy. The trial court granted summary judgment only on the breach-of-contract claim. Liberty filed a second motion for summary judgment, seeking judgment on all remaining claims. Liberty sought summary judgment on the Prompt Payment Act Claims on the ground that the full and timely payment of the appraisal award precluded any recovery on Prompt Payment Act Claims. The court rendered a final summary judgment dismissing all extra-contractual claims. The insured appealed the judgment challenging only the dismissal of his Prompt Payment Act Claims. The insured contended that Liberty committed the Alleged Violations before invoking the appraisal process and that neither the appraisal award nor Liberty's payment based on the appraisal award extinguished liability for the pre-appraisal violations.

The court of appeals began its analysis by assuming that Liberty committed the alleged violations. Even though the Fifth Circuit recently disapproved of the decision, the insured attempted to rely on the anomalous federal district court decision in *Graber v. State Farm Lloyds*. The court noted that the decision they relied on had recently been disapproved of by the Fifth Circuit. Further, the court noted that this reasoning directly conflicts with binding precedent. After noting that the *Mencahca* decision had no bearing on a Prompt Payment Act Claims, the court affirmed the judgment. The court concluded that precedent required a holding that an insurer's full and timely payment of the amount owed under the policy based on an appraisal award precludes the insured from recovering a judgment against the insurer based on its liability under the insurance policy, and that the insured's failure to recover any judgment based on the insurer's liability under the insurance policy precludes the insured from recovering under the prompt-payment statute.