

# TEXAS INSURANCE LAW NEWSBRIEF

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## FIFTH CIRCUIT EXAMINES DISCOVERY RULE AND HOLDS THAT INSURED'S CHAPTER 541 CONSUMER-PROTECTION CLAIMS ARE BARRED BY STATUTE OF LIMITATIONS

Last week, the Fifth Circuit Court of Appeals held that the insureds' claims of unfair or deceptive acts or practices – based on an alleged deceptive homeowner's insurance offer packet – were barred by the statute of limitations. To that end, the court concluded that the discovery rule did not toll the statute of limitations because the insureds should have discovered the alleged deceptive practices around the time they received the offer packet, not years later when their home sustained a loss.

In *Sideman v. Farmers Group, Inc.*, No. 17-51106, 2018 WL 4361160 (5th Cir., September 12, 2018, mem. op.), Susan and Mark Sideman maintained a Texas Farmers Insurance Company ("TFIC") homeowner's insurance policy. Farmers Group ("Farmers") managed TFIC's policy and communicated with the Sidemans on TFIC's behalf. In June 2013, Farmers mailed the Sidemans an offer package for a new policy (and notice that TFIC was not renewing the old policy). The offer package included a summary comparison of the old policy and the new policy. The package also included a new endorsement that excluded coverage for roof damage involving mere marring (like denting or scratching), and limited coverage to losses involving punctures or when the roof is rendered functionless. The offer package also included a letter bearing the signature and return address of a Farmers' insurance agent who neither prepared the offer package nor wrote the letter. Although the offer package urged the Sidemans to review the new policy and to contact the signatory agent for more information, it did not include a copy of the new policy.

Subsequently, the Sidemans purchased the policy. Three years later, in April 2016, a hail storm cosmetically damaged the Sidemans' metal roof, for which they made a claim. Farmers denied their claim based on the new endorsement excluding coverage for mere marring. In response, in January 2017, the Sidemans brought suit under Chapter 541 of the Texas Insurance Code (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices), alleging that the package's summary comparison and marring exclusion were misleading, the absence of the new policy from the package was deceptive and misleading, and the letter signed by the agent deceptively implied that he helped prepare the offer package.

The statute of limitations in Chapter 541 provides: "A person must bring an action under this chapter before the second anniversary of the following: (1) the date the unfair method of competition or unfair or deceptive act or practice occurred; or (2) the date the person discovered or, by the exercise of reasonable diligence, should have discovered that the unfair method of competition or unfair or deceptive act or practice occurred (the discovery rule)."

Because the Sidemans' claims were based upon the offer packet (received in June 2013), their claims (filed in January 2017) were time-barred unless the claims were saved by the discovery rule. The court, however, held that the discovery rule did not save the claims, and affirmed dismissal of the claims. The court reasoned that "reasonable diligence would have led to the discovery of the policy's absence[,] [the] allegedly misleading language in the summary comparison and marring provision[,] [and] the alleged misuse of the agent's name and return address." The court further reasoned that "the Sidemans acknowledge they received the summary comparison and marring provision in the packet, the packet materials urged them to review the full policy, and they never contacted anyone about the missing policy before purchasing it."