

# TEXAS INSURANCE LAW NEWSBRIEF

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## FEDERAL COURTS CONTINUE TO UPHOLD PAYMENT OF APPRAISAL AWARD AS PROTECTION AGAINST ALL CLAIMS

A federal district judge in Fort Worth recently added to the growing body of Texas law holding that a carrier's prompt payment of an appraisal award protects against all causes of action arising out of the loss, including breach of contract, Insurance Code violations, and bad faith. In *Braden v. Allstate Veh. & Prop. Ins. Co.*, No. 4:18-CV-00592-O, 2019 WL 201942 (N.D. Tex. Jan. 15, 2019) (slip op.), Allstate invoked appraisal on a residential wind/hail claim, promptly paid the resulting award, and immediately moved for summary judgment on all claims in the pending lawsuit.

The court granted Allstate's motion for summary judgment in full, relying on the Supreme Court of Texas opinion in *Menchaca* to conclude that because Braden had received all the policy benefits she was entitled to when she was paid the appraisal award, she could not maintain any extra-contractual claims after payment.

In a minor evidentiary sideshow, Braden challenged Allstate's payment summary as valid proof of the payments it had made or when it had actually sent them, arguing Allstate should have submitted copies of the checks themselves as the "best evidence." The court noted the copies of the checks would not have provided better evidence of the date they were sent out, and overruled the objections.

## STATE COURTS CONTINUE TO UPHOLD PAYMENT OF APPRAISAL AWARD AS PROTECTION AGAINST ALL CLAIMS

The El Paso Court of Appeals also recently upheld prompt payment of an appraisal award as protection against all causes of action. *Hinojos v. State Farm Lloyds*, No. 08-16-00121-CV, 2019 WL 257883 (Tex. App.—El Paso Jan. 18, 2019, no pet. h.) (slip op.) involved a residential wind/hail claim in which State Farm invoked appraisal and promptly issued a check for the resulting award, after adjusting for depreciation and deductible. However, due to a clerical error, the check was sent to the wrong address. After being made aware that plaintiff had not received the check, State Farm re-issued it, but by this time, Plaintiff's mortgagee had changed, and the check had to be re-issued again. Plaintiff's counsel ultimately received the negotiable check 89 days after it had first been sent out.

After State Farm won summary judgment in the trial court, this appeal resulted. On appeal, Hinojos attempted to argue around *Menchaca*, arguing that because the appraisal award is clear evidence that he was entitled to receive policy benefits, *Menchaca* should allow his extra-contractual claims to proceed. The court gave this argument short shrift, noting that the prompt payment of the award meant that Hinojos had received everything he was entitled to and was not entitled to receive any *additional* policy benefits. Therefore his only route to extra-contractual recovery would be by showing an independent injury, and Hinojos had made his entire case based on coverage and had never alleged an independent injury. Hinojos also attempted an argument that he had expressly refused to accept the appraisal award as full settlement of the claim, but the court summarily rejected the idea that one party to a policy can invalidate a binding appraisal award simply by refusing to accept payment.

Hinojos also contested State Farm's compliance with Texas Insurance Code Chapter 542 (Prompt Payment of Claims), arguing the appraisal process took more than 60 days and therefore made the payment of the award late under the statute. The court also rejected this argument, noting that State Farm promptly inspected the home and made its initial claim determination well within the statutory deadlines. In sum, timely paying an appraisal award is not a violation of Chapter 542 even if the appraisal process takes more than 60 days to complete.