

THOUGHT LEADERSHIP

News

LIMITATIONS PERIOD BARS CLAIMS ON RESIDENTIAL INSURANCE POLICY SINCE CARRIER DID NOT CHANGE ITS CLAIM DECISION.

Newsbrief

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This case is one of the thousands of wind-hail cases arising out of the 2012 storms in the Rio Grande Valley. *Chapa v. Allstate Texas Lloyds*, 2015 WL 3833074 (S.D. Tex – McAllen June 22, 2015) arose from a wind and hail storm which struck the Valley and allegedly caused damage to Chapa's home on March 29, 2012. Chapa immediately filed a claim with Allstate. An adjuster inspected the house on April 9th and determined the RCV was \$24,713. Allstate cut a check for the ACV on April 10th and paid the recoverable depreciation on June 22, 2012. The claim was closed the same day. Two years later, on June 12, 2014, a Public Adjuster sent a letter to Allstate notifying them that Chapa hired them to represent Chapa on the claim. On June 16, Allstate sent two letters to the PA. The first letter acknowledged the PA's representation and stated Allstate was "continuing to investigate [the] insured's loss." The second letter advised a re-inspection would not be granted but said the PA could submit a new estimate if the PA disagreed with Allstate's estimate. A week later, Allstate followed up with another letter stating it reserved the right to deny coverage for the March 29, 2012 loss "supplement" because it came 26 months after the loss was settled. On August 4, 2014, the PA forwarded an estimate to Allstate in the amount of \$67,671 and Allstate denied it by letter dated the same day. Suit was filed by Chapa in December of 2014 in state court for breach of contract, violations of Sections 542 and 541 of the Texas Insurance Code, breach of the duty of good faith and fair dealing, and violations of the DTPA. The case was then removed to federal court. Allstate filed a motion for summary judgment on all of Chapa's claims based on limitations, both contractual and statutory.

At the center of the dispute was the question of when did the causes of action for breach of contract and extra-contractual damage accrue. The parties agreed the proper limitations period for breach of contract was two years and one day (under the insurance contract) and two years for the extra-contractual claims (under the applicable statute). Plaintiff contended limitations did not expire on June 22, 2014 because the carrier reopened the claim later in June by proceeding with a re-investigation of the loss and recognizing there were some additional damages found in August of 2014. Thus, Plaintiff argued the date of determination of the claim was August 2014 when Allstate made its "final" claim decision. Plaintiff's secondary argument contended Allstate restarted the limitations period when it reopened the claim and investigation in August of 2014.

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Last week, the trial court granted Allstate's Motion for Summary Judgment on limitations because the insurer paid the claim and "closed the case file" on June 22, 2012. The 5th Circuit Court of Appeals has recognized that, "the cause of action begins to accrue, at the latest, upon the issuance of a final letter and the closing of the claims file. Any request by the plaintiff to reopen the claim does not toll or extend the limitations period following the claim decision ... [if] it does not change its position on the claims.."