

THOUGHT LEADERSHIP

News

TEXAS SUPREME COURT FINDS FENCE IS COVERED AS PART OF DWELLING OVERTURNS APPELLATE COURT AND SUMMARY JUDGMENT IN FAVOR OF INSURER

Newsbrief

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The Supreme Court of Texas recently found that a wind damaged fence on the insured property was part of the dwelling and not an "other structure" covered by a lower policy limit. In *Nassar v. Liberty Mutual Fire Insurance Company*, 2017 WL 382424 (Tex. January 27, 2017), the insured had 4000 linear feet of fencing that sustained \$58,000 in damage as a result of Hurricane Ike. The insurer argued that the fence was not part of the dwelling and only qualified for coverage as an "other structure" which was limited to 10% of the dwelling limit or \$24,720 as paid. The insured filed suit and the trial court agreed with the insurer's policy interpretation and granted summary judgment in their favor. The 14th Court of Appeals in Houston affirmed. See *Texas Insurance Law Newsbrief* October 7, 2015.

The Supreme Court of Texas analyzed the homeowner's policy "dwelling" provision covering "the dwelling on the residence premises...including structures attached to the dwelling" and; the "other structures" provision referencing structures on the residence premises "set apart from the dwelling by clear space". The court observed that "structures" was not defined in the policy so the word should be given its "ordinary and generally accepted meaning" under Texas law. "Structure" was defined in part as "any construction...composed of parts purposely joined together." The court also observed that the fencing in this case was either bolted to the dwelling in four places (Liberty Mutual's contention) or "fastened to the dwelling either by being cemented to the brick and slab of the house (as the Nassar's contend)." And either way, the fence was "attached to the dwelling" and as such, the policy unambiguously extended coverage to the fence as part of the dwelling.

The court also addressed Liberty Mutual's question of "when a fence attached to a dwelling by another fence would become an 'other structure' under the policy" by noting that this is "a fact issue best resolved by the trial court on remand." "On the undisputed facts in this record, a fact finder could reasonably determine that some of the 4,000 feet of fencing constructed of different materials and spanning six acres in a 'network' across the Nassars' property is not part of the 'structure attached to the dwelling.'" Accordingly, the court of appeals decision affirming summary judgment in favor of Liberty Mutual was reversed and the case was remanded to the trial court for further proceedings.

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Editor's Note: This case emphasizes the need for claim adjusters to make a factual determination (documented with good photos) of whether the fence is "attached to the dwelling." It can also be significant in underwriting terms – in the Nassar case, there was 4,000 linear feet of fencing that evidently hadn't been considered in the underwriting process.