

THOUGHT LEADERSHIP

News

ANOTHER TEXAS COURT FINDS TIMELY PAYMENT OF APPRAISAL AWARD PRECLUDES EXTRA-CONTRACTUAL LIABILITY

Newsbrief

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In granting summary judgment in an insurer's favor, the San Antonio Court of Appeals rejected arguments that the Texas Supreme Court's recent efforts to clarify standards for insurer's extra-contractual liability in *USAA Tex. Lloyds Co. v. Menchaca*, 2017 WL 1311752 (Tex. April 7, 2017) should allow a lawsuit to proceed despite timely payment of an appraisal award. In *Alvarez v. State Farm Lloyds*, No. 04-17-00251-CV, 2018 WL 340135 (Tex. App.—San Antonio Jan. 10, 2018) (mem. op.), the insured claimed wind and hailstorm damage to their residence. State Farm investigated the claim and because the damage was less than the deductible, no payment was issued. The insured ultimately filed suit and State Farm invoked the appraisal clause in Alvarez's policy. An award was later entered for an amount in excess of the deductible and State Farm issued full and timely payment of the award in compliance with the policy and the Texas Insurance Code. State Farm then filed a motion for summary judgement in the pending lawsuit.

State Farm argued its timely payment of the amounts owed under the appraisal award precluded the breach of contract and extra-contractual claims asserted against it. The insured argued the recent Texas Supreme Court's decision in *Menchaca* overruled the cases State Farm relied upon in seeking summary judgment of the extra-contractual claims, including *Garcia v. State Farm Lloyds*, 514 S.W.3d 257 (Tex. App.—San Antonio 2016, pet. denied). The court noted that it had recently examined this precise issue in *Ortiz v. State Farm Lloyds*, No. 04-17-00252-CV, 2017 WL 5162315 (Tex. App.—San Antonio Nov. 8, 2017, pet. filed) (mem. op.). In *Ortiz*, the court held *Menchaca* did not abrogate *Garcia*. In *Ortiz*, the court recognized that under *Garcia*, an insurer's payment of an appraisal award entitles the insurer to summary judgment on an insured's contractual and extra-contractual claims. Accordingly, because State Farm timely paid the appraisal award and because Alvarez failed to present evidence of an independent injury; summary judgment was properly granted as to all claims.