

THOUGHT LEADERSHIP

News

ANOTHER TEXAS COURT FINDS INSURED'S BREACH OF CONTACT AND EXTRA-CONTRACTUAL CLAIMS FAIL TO SURVIVE TIMELY PAID APPRAISAL AWARD

Newsbrief

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Last week, Houston's Fourteenth Court of Appeals found that the insured's contractual and extra-contractual claims did not survive the insurer's timely payment of an appraisal award. In *Haiquan Zhu v. First Cmty. Ins. Co.*, No. 14-16-00226-CV, 2018 WL 842350 ((Tex. App. – Houston [14th Dist.] Feb. 13, 2018), the insured presented a claim for storm damage to the insured residence. An independent adjuster inspected the loss and found damage that totaled \$2,726.14. After applying the policy's deductible, First Community issued payment to the insured for \$226.14. A few months later, Zhu filed suit against First Community asserting claims for breach of contract, violation of the Prompt Payment of Claims Act, violations of Insurance Code chapter 541, and violations of the Deceptive Trade Practices Act ("DTPA"). First Community invoked the appraisal provision of the policy and demanded appraisal of the amount of the loss. The two appraisers and the umpire issued an appraisal award in which they agreed that the amount of the loss was \$17,384.30 in replacement cost, depreciation of \$3,500, and an actual cash value of \$13,884.30. First Community promptly issued a check to the insured for the actual cash value of the appraisal award, less the deductible and the prior payment.

After payment of the appraisal award, First Community moved for summary judgment on all of the insured's claims. The trial court granted the motion as to all causes of action and Zhu appealed. The appellate court began by noting that Texas courts have held that appraisal provisions in insurance contracts are binding and enforceable. The court held that because Zhu had not asserted one of the valid grounds for setting aside the appraisal award, First Community's payment of the appraisal award satisfied their contractual obligations under the policy. Further, the appellate court upheld the summary judgment on the prompt pay claims due to the timely payment of the appraisal award. Finally, the court also upheld summary judgment on the Chapter 541 and DTPA claims because Zhu had provided no evidence of an injury independent of the policy benefits.