

THOUGHT LEADERSHIP

News

## COURT GRANTS INSURER'S WRIT OF MANDAMUS TO ENFORCE RIGHT OF APPRAISAL

Newsbrief

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Last Thursday, the Beaumont Court of Appeals of Texas granted Allstate Vehicle and Property Insurance Company's petition for mandamus relief compelling an appraisal of residential storm damage. *In Re Allstate Vehicle and Property Insurance Company*, No. 09-18-00024-CV, 2018 WL 10033794 (Tex. App.—Beaumont Feb. 22, 2018) the Court addressed the insurer's right to enforce the underlying policy's appraisal provision after the insured filed suit. The court found, among other things, that the policy set no time limit to invoke the appraisal clause and Allstate did not waive its right to appraisal. Accordingly, the court granted Allstate's petition and ordered the trial court to vacate its order denying Allstate's motion to compel and to enforce the appraisal clause.

Pamela Bailey's home was insured by Allstate when it was damaged by a storm in April 2015. Bailey submitted an estimate for repairs to Allstate totaling \$13,776 while Allstate determined the home suffered only \$2,766 in damages. After applying Bailey's deductible, Allstate indicated it would pay \$766 to Bailey based on its damage calculation. Accordingly, Bailey's attorney wrote Allstate a letter in July 2017 demanding payment of \$11,776—the Insured's estimate less Allstate's prior payment and the deductible. Counsel for Bailey further demanded Allstate pay penalties of \$3,405 as well as \$3,533 in attorney's fees. The letter stated if Allstate wished to invoke the policy's appraisal clause, they were to identify an appraiser within 20 days of receipt of the letter. Forty days following receipt, Allstate responded by declining the demand, however the response was silent on the issue of appraisal.

Bailey filed suit in August 2017 alleging breach of contract, misrepresentation, failure to promptly pay her claim, and breach of the duty of good faith and fair dealing. Allstate answered and then invoked the appraisal clause in November 2017, notifying Bailey's counsel of its chosen appraiser. When Bailey failed to respond, Allstate filed a motion to compel an appraisal. In her response, Bailey asserted that by waiting until after suit was filed, Allstate waived its right to appraisal. Bailey further argued that Allstate's appraisal was an impermissible request to compel specific performance under the policy. The trial court denied Allstate's motion to compel.

In its mandamus action, Allstate alleged the trial court abused its discretion in denying its motion to compel. Allstate further argued Bailey was not prejudiced by a delay in its appraisal request, since Bailey herself could have demanded an appraisal before filing suit. Allstate further argued that the trial court's denial was improper by interfering in its right to defend against Bailey's claims that Allstate breached its policy obligations. Bailey countered that mediation and trial would be more efficient than appraisal. Bailey further asserted that the trial court had basis

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to deny Allstate's motion based on her incurred attorney fees and expenses in filing suit and that additional fees incurred in appraisal and trial would hinder her ability to make repairs to her home. Bailey claimed Allstate waived its right to appraisal as it failed to invoke the right before engaging in litigation. Finally, Bailey asserted Allstate waived its right to appraisal by failing to allege that Bailey had not submitted her property damage claim to the appraisal process.

The Court noted an appraisal clause binds the parties to have the loss amount determined in a particular way and waiver requires either the intentional relinquishment of a known right or intentional conduct inconsistent with claiming the right. Notwithstanding the demand letter, the Court found that the policy did not place a time limit on invoking the appraisal and the attorney letter cannot unilaterally change Allstate's rights. Accordingly, the trial court did not have discretion to re-write the policy requiring Allstate to invoke the right to appraisal prior to Bailey filing suit. The Court further concluded that the record did not support that Allstate unreasonably delayed or that Bailey was prejudiced by the alleged delays. Specifically, the policy did not contain a time limit on invoking the appraisal clause and Bailey herself could have invoked the clause prior to filing suit. Lastly, the Court rejected Bailey's argument that Allstate failed to file the proper pleading—rejecting the notion that filing a motion to compel arbitration is analogous to attempting to enforce an arbitration award; “a party's right to appraisal may be accompanied by filing a motion to compel appraisal which is the procedure that Allstate followed here.” Because Allstate followed the correct procedure and did not waive its right to appraisal, the Court ordered the trial court vacate its order denying Allstate's motion to compel and to enforce the appraisal clause.