

THOUGHT LEADERSHIP

News

SUPREME COURT OF TEXAS HOLDS THAT A TIMELY PAYMENT OF APPRAISAL AWARD, IN THE ABSENCE OF ESTABLISHED LIABILITY, PRECLUDES RECOVERY OF DAMAGES UNDER TPPCA'S SIXTY-DAY PROMPT PAYMENT RULE

Newsbrief

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Last week, the Supreme Court of Texas held that insurers are liable for damages under Section 542.060 of the Texas Prompt Payment of Claims Act ("TPPCA") only when the insurer (1) accepts liability or is adjudicated liable under the policy, and (2) violated a TPPCA deadline or requirement. In *Barbara Technologies Corporation v. State Farm Lloyds*, No. 17-0640, 2019 WL 2710089, (Tex., June 25, 2019, mem. op.), Barbara Technologies Corporation ("Barbara Tech") contracted with State Farm Lloyds for property insurance covering Barbara Tech's commercial property, including wind and hail coverage. After a wind and hail storm damaged Barbara Tech's property, it filed a claim with State Farm. State Farm inspected the property and denied Barbara Tech's claim stating that the property sustained \$3,153.57 in damages, which was less than Barbara Tech's \$5,000 deductible. Consequently, Barbara Tech filed suit against State Farm, alleging violations of the TPPCA, among other claims. In response to the suit, State Farm invoked the appraisal provision under the policy. Approximately seven months later, the appraisers agreed to an appraisal value of \$195,345.63, which State Farm paid, less depreciation and the deductible, six days after receipt of the appraisal award.

Barbara Tech accepted the payment but continued with its lawsuit, contending that State Farm still owed damages (18% interest and attorney fees) pursuant to section 542.060 of the Texas Insurance Code because State Farm allegedly violated Section 542.058(a) by failing to pay the claim within sixty days of receiving the information required to secure final proof of Barbara Tech's loss (i.e. over one year earlier when State Farm initially denied the claim). State Farm filed a motion for summary judgment asserting that its timely payment of the appraisal award precluded Barbara Tech from recovering damages pursuant to TPPCA's sixty-day requirement.

The Supreme Court of Texas concluded that a full and timely payment of an appraisal award under the policy precludes an insured from recovering damages under the TPPCA when acceptance or adjudication of liability is absent. In the court's words: "until an insurer is determined to owe the claimant benefits and thus is liable under the policy—either by accepting the claim and notifying the insured that it will pay, or through an adjudication of liability—the insurer is required to pay nothing, is subject to no payment deadline, and is not subject to TPPCA damages for

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delayed payment.” The court further concluded that State Farm’s payment based on the appraisal was neither an acknowledgment of liability under the policy nor an award of actual damages. In sum, the Supreme Court of Texas held that “invocation of the contractual appraisal provision to resolve a rejected claim . . . neither subjects an insurer to TPPCA damages nor insulates the insurer from TPPCA damages. An insurer will become liable for TPPCA damages under section 542.060 only if it (1) accepts liability or is adjudicated liable under the policy, and (2) violated a TPPCA deadline or requirement.”