

THOUGHT LEADERSHIP

News

COURT OF APPEALS CONCLUDES THAT PAYMENT OF APPRAISAL AWARD RENDERED EXTRACTIONAL CLAIMS MOOT, EXCEPT TPPCA CLAIM

Newsbrief

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Last week, the Fort Worth Court of Appeals concluded that State Farm's payment of appraisal award rendered the insureds' extracontractual claims moot, except their claim for violation of Texas Prompt Payment of Claims Act ("TPPCA"). In *Lambert v. State Farm Lloyds*, No. 02-17-00374-CV, 2019 WL 5792812, (Tex. App.—Fort Worth Nov. 7, 2019, mem. op.), the Lamberts submitted a property damage claim to their insurer, State Farm. The adjuster inspected the Lamberts' home and found less than \$5,000 in damage. Because depreciation and their policy deductible amounted to more than \$5,000, State Farm's letter showed a "Total Payable" of "\$-0-". Thereafter, the adjuster re-inspected the Lamberts' home, this time finding closer to \$10,000 in damage, netting the Lamberts roughly \$1,700, which State Farm paid.

Dissatisfied, the Lamberts sued State Farm asserting extracontractual claims and a violation of the TPPCA, among other claims. State Farm then moved to compel the appraisal procedure, which the Lamberts and State Farm followed, leading to an appraised amount of loss at \$99,112.72 (replacement cost) and \$70,965.54 (actual cash value). Two days after learning of the award, State Farm paid the Lamberts the appropriate amount, after deducting depreciation and the past payment of roughly \$1,700.

Subsequently, State Farm moved for summary judgment arguing that because it paid the appraisal amount, it was entitled to a take-nothing judgment. The Lamberts then moved for partial summary judgment on their TPPCA claim, contending that they were entitled to statutory interest and attorney's fees. The trial court eventually signed a final judgment in State Farm's favor and denied the Lamberts' motion. The Lamberts appealed.

On appeal, the Lamberts argued that their extracontractual claims were still viable even though State Farm paid the appraisal award. Under Texas law, "[t]o recover on extracontractual claims when an appraisal has been completed, the plaintiff must allege a statutory violation that causes an injury independent of the loss of benefits under the policy." That is, the plaintiff must claim "actual damages" aside from the policy benefits paid to satisfy the appraisal award. Attorney's fees, court costs, and exemplary damages are not considered actual damages. Here, because the only actual damages the Lamberts' sought was the policy benefits, the court of appeals concluded their claims were

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moot and held that the trial court did not err by granting State Farm's summary-judgment motion.

The Lamberts also argued that State Farm, despite promptly paying them after the appraisal award, failed to follow the TPPCA's 60-day time limit for payment and thus they were entitled to statutory interest and attorney's fees. The court of appeals, noting that the TPPCA neither imposes deadlines for the appraisal process within the prompt-pay scheme nor exempts the appraisal process from the deadlines, remanded the case to the trial court to first determine liability and then sort through TPPCA's timing requirements.