

THOUGHT LEADERSHIP

News

SAN ANTONIO COURT REFUSES TO ENFORCE HOMEOWNER POLICY'S COSMETIC DAMAGE EXCLUSION AND AFFIRMS TREBLE DAMAGE AWARD

Newsbrief

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In a reprise of a case we reported on December 15, 2020, (here) the San Antonio Court of Appeals recently affirmed on rehearing a judgment in favor of a policyholder on a residential hail claim and reinstated a previously overturned award of treble damages. *Allstate Veh. & Prop. Ins. Co. v. Reininger*, No. 04-19-0443-CV, 2021 WL 2445622 (Tex. App.—San Antonio June 16, 2021) involved a hail claim made regarding a home with a metal roof. The Allstate insurance policy contained a cosmetic damage exclusion which stated the policy did not cover “[c]osmetic damage caused by hail to a metal roof surface, including but not limited to, indentations, dents, distortions, scratches, or marks, that change the appearance of a metal roof surface.” It also stated, “We will not apply this exclusion to sudden and accidental direct physical damage to a metal roof surface caused by hail that results in water leaking through the metal roof surface.”

This exclusion resulted in a battle of the experts over the question of whether hail damage to the metal roof was cosmetic or not. The jury found Allstate breached its contract, committed fraud, and knowingly violated the Texas Insurance Code, awarding treble damages for the knowing violation. In its original opinion issued last December, the court of appeals upheld the actual damages, but reversed the treble damage award.

After the original opinion was issued, both parties moved for rehearing. The court granted Reininger’s motion and denied Allstate’s. In last week’s replacement opinion, the court repeated most of its original conclusions upholding the actual damages awarded by the jury, but also reinstated the jury’s award of treble damages. The court stated there was evidence Reininger disputed the original finding of cosmetic damage, and that the adjuster did not follow company procedure requiring him to retain a structural engineer before denying the claim. Additionally, there was evidence showing Allstate knew Reininger had requested a second inspection and that his agent had also requested a second inspection, but Allstate closed its file without completing the requested inspection. The court concluded this evidence was sufficient to support the jury’s finding of a knowing violation.

**SAN ANTONIO COURT REFUSES TO ENFORCE HOMEOWNER POLICY'S COSMETIC
DAMAGE EXCLUSION AND AFFIRMS TREBLE DAMAGE AWARD**

Editor's Note: It is extremely rare for treble damage awards to be upheld on appeal, and we will continue to watch this case, as it is likely an appeal to the Supreme Court of Texas will be sought.