THOUGHT LEADERSHIP

News

PAYING APPRAISAL AWARD AND INTEREST NOT ENOUGH TO PROTECT INSURERS FROM POST-APPRAISAL LITIGATION

Newsbrief
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Recently, a Houston court of appeals reversed a summary judgment originally granted in favor of an insurer after the insurer paid an appraisal award on a residential wind/hail claim. In *Tex. FAIR Plan Ass'n v. Ahmed*, No. 14-20-00585-CV, 2022 WL 3268391 (Tex. App.—Houston [14th Dist.] Aug. 11, 2022, no pet. h.) (slip op.), FAIR Plan initially found the hail damage was below the deductible. Ahmed sued, and FAIR Plan demanded appraisal. The appraisal resulted in the two appraisers issuing an agreed award which was above the deductible. FAIR Plan promptly paid the replacement cost less the deductible, choosing not to enforce the policy's replacement cost conditions.

While this suit was pending, the Supreme Court of Texas decided *Barbara Technologies Corp. v. State Farm Lloyds*, 589 S.W.3d 806 (Tex. 2019), holding that payment of an appraisal award after the Texas Insurance Code Chapter 542 payment deadline for the claim has elapsed does not entitle the insurer to summary judgment. When *Barbara Technologies* was issued, FAIR Plan immediately made a supplemental payment to Ahmed of the Chapter 542 interest plus pre-judgment interest plus $2,500 in "estimated" attorney fees. FAIR Plan then moved for summary judgment on the ground that it had paid not only the appraisal award itself, but also all amounts that might be considered due under Chapter 542 as interpreted by the *Barbara Technologies* opinion.

At the same time, Ahmed filed his own motion for summary judgment, seeking a much larger attorney fee award. The court denied FAIR Plan's motion, conducted a bench trial on attorney fees, and awarded Ahmed a judgment which included the Chapter 542 interest and $96,000 in attorney fees through trial.

On appeal, the appellate court concluded neither side was entitled to judgment, reasoning that *Barbara Technologies* was based on liability for a claim that is either proven or admitted, and because appraisal does not determine liability, paying an appraisal award is not proof of liability. Therefore, the court reversed the judgment in favor of Ahmed and remanded the case.

Editor's Note: When *Barbara Technologies* was issued, many in the industry read it to mean that when paying an appraisal award after initially finding the claim below the deductible, the insurer should also calculate and pay the most generous amount of Chapter 542 interest that might be due, to ensure any alleged violation has been fully cured and nothing more could be owed under Chapter 542. Some federal courts have favored that approach, while at

least one has not. FAIR Plan obviously took that approach here but found this state court much less receptive than the federal courts.

See *Abundis v. Allstate Tex. Lloyd's*, 494 F. Supp. 3d 442 (S.D. Tex. 2020); *Trujillo v. Allstate Vehicle & Prop. Ins. Co.*, 2020 WL 6123131 (S.D. Tex. Aug. 20, 2020); *Ahmad v. Allstate Fire & Cas. Ins. Co.*, 2021 WL 1429523 (S.D. Tex. Feb. 28, 2021), report and recommendation adopted, 2021 WL 1428491 (S.D. Tex. Mar. 24, 2021) (all holding payment of award plus interest entitled insurer to summary judgment); but see contra *Martinez v. Allstate Vehicle & Prop. Ins. Co.*, 2020 WL 6887753 (S.D. Tex. Nov. 20, 2020) (holding payment of 542 interest did not fully cure a 542 violation). See also *Reyna v. State Farm Lloyds*, 2020 WL 1187062 (S.D. Tex. Mar. 12, 2020) in which the insurer did not pay 542 interest, but was held to have fully complied with Chapter 542 by making reasonable payments within the initial 60-day statutory period, even though appraisal later determined a higher value for the claim.

An approach that was successful in the *Abundis* case was calculating and paying all Chapter 542 interest that could possibly be due and making an offer of judgment on attorney fees.