

THOUGHT LEADERSHIP

News Briefs

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FIFTH CIRCUIT CERTIFIES 542A ATTORNEY FEE QUESTION TO TEXAS SUPREME COURT

As has become increasingly common in the last 15 years, the Fifth Circuit Court of Appeals recently sought guidance from the Supreme Court of Texas on an important issue of Texas Insurance Law that has not been previously addressed by the supreme court.

Rodriguez v. Safeco Ins. Co. of Indiana, 73 F.4th 352 (5th Cir. July 12, 2023) involved a tornado claim under a homeowner's policy. After being unsatisfied with Safeco's payment, Rodriguez sued Safeco.

Safeco invoked appraisal, and when appraisal was complete, paid Rodriguez the amount of the appraisal award, less the deductible and the prior payment. Safeco also paid Rodriguez an additional amount calculated to be the maximum possible penalty interest that could be due under Tex. Ins. Code Chapter 542A if the appraisal payment were considered a late payment.

Safeco then moved for summary judgment, arguing Rodriguez could not recover attorney fees under Chapter 542A because its payment of the appraisal award plus the penalty interest eliminated all remaining claims, leaving no unpaid claim on which fees could be awarded. The district court granted Safeco's motion.

On appeal, the Fifth Circuit acknowledged that the federal courts who have addressed this issue are split. Although the Texas Supreme Court has held that payment of an appraisal award does not eliminate the ability to recover fees, and that pre-payment of interest does not change that rule, those cases did not involve the 2017 amendments that created Chapter 542A, which contains its own more restrictive attorney fee provisions.

Therefore, the Fifth Circuit certified the following question:

Related Capabilities

Auto Insurance (Personal and Commercial)

Bad Faith Litigation

Insurance Coverage & Bad Faith Litigation

Insurance Litigation

In an action under Chapter 542A of the Texas Prompt Payment of Claims Act, does an insurer's payment of the full appraisal award plus any possible statutory interest preclude recovery of attorney's fees?

This question is generating significant interest from both the insurance industry and the plaintiffs' bar. As always, we will update our readers on any developments in this case including possible amicus brief opportunities.

FIFTH CIRCUIT EXAMINES UIM COVERAGE FOR RIDE SHARE DRIVER IN A SHOOTING AND CHASE INCIDENT

Neptune v. Indian Harbor Ins. Co., No. 22-20592, 2023 WL 4884863 (5th Cir. Aug. 1, 2023) involved a Lyft driver who was involved in a shooting and car chase.

After plaintiff Neptune picked up a passenger, another man who had been following the passenger approached her car and tried to get in. The passenger instructed Neptune to drive away quickly, and the second man fired a gun at her vehicle, blowing out her back window. A harrowing chase ensued which ended with the car wrecked and Neptune and her passenger hiding in a ditch while waiting for the police to arrive. Neptune then made injury claims arising from the crash that ended the chase and sought UIM benefits from Indian Harbor, who provided the UIM coverage for Lyft drivers.

The district court granted summary judgment for Indian Harbor, holding there was no evidence the insured vehicle was struck by another vehicle, and also that the injuries and damages arising from the shooter's conduct did not arise out of the "use of a motor vehicle." Neptune stated in her appellate brief that the unknown vehicle driven by the shooter hit her vehicle from behind shortly before she crashed, but her deposition testimony did not support that statement. During her deposition, Neptune had only stated that she did not recall whether the shooter actually hit her car with his own while chasing her. Thus, the Fifth Circuit affirmed the win for the carrier, relying primarily on the lack of evidence showing there was physical contact with the other vehicle.