Annual Survey of Texas Insurance Law

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I. INTRODUCTION

The Texas Supreme Court clarified the limits of taking a corporate representative's deposition and affirmed that bifurcation was an alternative to severance in underinsured motorist cases.[1]

Moreover, an insurance policy's definition of "suit" included alternative dispute resolution proceedings according to the Fifth Circuit, triggering the insurance company's duty to defend.[2]

Several courts are making clear additional damages following an appraisal award will not be allowed except in rare occasions where an "independent injury" is caused by the delay in policy benefits.[3]

Insurance companies' pleas in intervention are being denied by trial courts when their insurance adjusters and adjuster firms are named in lawsuits, but the insurance company is not sued. The appellate courts have reversed these rulings consistently and held the insurers possessed a justiciable interest in the litigation.[4] However, the Fifth Circuit is preventing insurance companies from filing declaratory actions in federal court to determine *Stowers* cases.[5]

II. FIRST PARTY INSURANCE POLICIES & PROVISIONS

A. Automobile

An on-duty police officer caused a car crash while in his police truck. The injured insureds filed suit against the officer, but later nonsuited the lawsuit. Then the insureds filed suit asserting claims against their own insurer for uninsured/underinsured (UM/UIM) benefits. The insurer filed a summary judgment motion asserting the applicable UM/UIM provision excluded coverage if the car involved in the accident was owned by any governmental unit. The trial court denied the insurer's motion. The insurer filed a petition for permission to appeal an interlocutory order, which the appellate court granted. The appellate court looked at the policy to find the definition of "uninsured" included underinsured motor vehicle. Therefore, under the exclusion both uninsured and underinsured vehicles do not include a vehicle owned by any governmental unit. Because the car involved in the crash was owned by a governmental agency, it did not qualify as an uninsured vehicle. The appellate court reversed the trial court's order in favor of the insureds and rendered judgment that the insureds take nothing on their claims for UM/UIM benefits. *Progressive Cnty. Mut. Ins. Co. v. Saldivar*, 712 S.W.3d 691 (Tex. App.—Houston [14th Dist.] 2025).

The named insured was an excluded driver from his own insurance policy. After a wreck in which the named insured was driving, the insurer denied coverage based on the exclusion. The insured argued that since the Texas Insurance Identification Card (*see* 28 Tex. Admin. Code §§ 5.11-.611) showed him as an "insured," that the policy was modified accordingly. The appellate court rejected that argument, holding the card did not modify the insurance policy. The court also rejected the insured's argument of promissory estoppel and breach of warranty, and affirmed summary judgment for the insurer. *Daugherty v. AmTrust Ins. Co. of Kansas, Inc.,* 2025 WL 3038075 (Tex. App.—Austin 2025).

An insured sued for underinsured motorist benefits. After several dismissals and re-filings, the insured sought to try the declaratory judgment action against the UIM insurer before trying the third-party case against the UM insurer. The appellate court noted the unique circumstances of the case, including the insurer's agreement to be bound by the third-party judgment. It then ordered the UIM case abated until the underlying claim was determined. *In re Liberty Cnty. Mut. Ins. Co.*, 2025 WL 3179755 (Tex. App.—Eastland 2025).

B. Homeowners

An insured submitted a claim to his homeowner's insurance for damage to his property incurred during a windstorm. The insured invoked appraisal, but the insurer disagreed with the appraisal award and what was owed under the policy terms. The insured sued in state court alleging breach of contract and violations of the Texas Prompt Payment of Claims Act. The insurer removed the case, and then tendered the actual cash value as provided in the appraisal award. The insurer moved for summary judgment which the district court granted. The insured appealed arguing he was entitled to actual and treble damages in tort and was not required to prove an independent injury caused by the delay in payment of his policy benefits. The Fifth Circuit disagreed stating, "that if the only 'actual damages' that a plaintiff seeks are policy benefits that have already been paid pursuant to an appraisal provision in that policy, an insured cannot recover for bad faith either under Chapter 541 of the Texas Insurance Code or in common law tort." The cases the insured pointed to argue his point all involved cases where the insurer had not paid the insured under the policy. *See USAA Tex. Lloyds Co. v. Menchaca,* 545 S.W.3d 479 (Tex. 2018); *Lyda Swinerton Builders, Inc. v. Oklahoma Sur. Co.*, 903 F.3d 435 (5th Cir. 2018); *Vail v. Tex. Farm Bureau Mut. Ins. Co.*, 745 S.W.2d 129 (Tex. 1988). The Fifth Circuit held the district court properly concluded the insurer was entitled to summary judgment and affirmed its holding. *Mirelez v. State Farm Lloyds*, 127 F.4th 949 (5th Cir. 2025).

This case begins with a homeowner's claim for water damage against his homeowner's insurance policy. The insurance policy

excluded damage caused by surface water or faulty construction. The homeowner did not live in the insured house, but his daughter did. She had a pool and patio added to the house. An inspection by the insurer showed the water intrusion into the house was caused by inadequate drains built into the patio. The daughter sued the pool contractor and recovered $35,000, then repaired the pool area for $25,000. The trial court granted summary judgment for the insurer, holding the loss fell within the exclusions. The Fifth Circuit affirmed. *Benitez v. Amguard Ins. Co.*, 2024 WL 4987246 (5th Cir. 2024) (per curiam).

The Texas Windstorm Insurance Association (TWIA) filed an interlocutory appeal from a summary judgment in favor of its insured following a wind and hail damage claim. The TWIA statute requires a claim must be filed within one year of the loss. Tex. Ins. Code Ann. §2210.573(a). The legal issue in this intermediate appeal was who had the burden of proof. TWIA argued the burden of proof was on the insured to show a timely filing. The appellate court held that the one year time limit was not a condition precedent to filing suit but rather an affirmative defense with the burden of proof on the insurer. *Tex. Windstorm Ins. Ass'n v. Valstay, L.L.C.*, 2024 WL 4986076 (Tex. App.—Corpus Christi 2024, pet. denied).

The trial court dismissed the action and sanctioned the insured's attorney when they failed to open the house for inspection.

The insureds' house was burglarized and vandalized. The insurance policy excluded or restricted coverage for burglary and vandalism if the house had been vacant for the preceding sixty days. The Fifth Circuit affirmed the trial court's summary judgment for the insurer based on the vacancy exclusions. The Fifth Circuit analyzed the summary judgment evidence, including deemed admissions and sham affidavits, concluding the trial court properly admitted and considered the supporting evidence. *Childers v. Allstate Indem. Co.*, 2025 WL 416091 (5th Cir. 2025).

After a hurricane loss, the insured homeowner filed a claim with his insurer. The insurer made an initial payment but not enough to satisfy the insured. The parties went through the appraisal process, and the insurer paid the appraised amount. The insured homeowner then filed suit, went to trial, and obtained a jury verdict in his favor. The appellate court reversed and rendered, holding under Texas Insurance Code §542A.007 and *Rodriguez v. Safeco Ins. Co. of Ind.*, 684 S.W.3d 789 (Tex. 2024), the insured homeowner's additional claims were barred. The appellate court also rejected the independent injury claim. *Homeowners of Am. Ins. Co. v. Menchaca,* 2025 WL 2165187 (Tex. App.—Houston [1st Dist.] 2025, no pet.).

The insured's home was damaged when the city ordered the house next door to be demolished. The insured filed a claim which the insurer denied, asserting the loss was excluded under the governmental action exclusion. The insured filed suit in state court, and the insurer removed the action to federal court. The trial court dismissed the action and sanctioned the insured's attorney when they failed to open the house for inspection. The insured appealed the dismissal and sanctions. The insurer also appealed the court's denial of further sanctions and the award of cost. The Fifth Circuit affirmed the dismissal holding there was no fact issue presented that could take the loss out of the governmental exclusion. It also affirmed the sanctions against the insured's counsel, finding the sanctions simply covered the insurer's cost for appearing at the futile inspection. Finally, the Fifth Circuit remanded the case to consider the additional sanctions and cost. *Wright v. ASI Lloyds*, 2025 WL 1588832 (5th Cir. 2025).

C. Commercial Property

An insured university brought suit against its insurer for breach of contract when it denied coverage for business interruption and other losses during the COVID-19 pandemic. The insured's experts testified the virus did land on surfaces and medical equipment and made the property less inhabitable and far more expensive to try to mitigate. Additionally, the expert testified, "the virus substantially and fundamentally changed the way Baylor could use its property." The jury awarded more than $12 million to the insured university. The insurer appealed. The appellate court looked to other rulings on the issue at the Fifth Circuit and Texas Supreme Court, who both concluded that a "direct physical loss of or damage to" property requires a "tangible alteration or deprivation of the property." The appellate court held the presence of coronavirus on a college's property did not cause "direct physical loss or damage to" the property, and therefore, the policy did not provide coverage. Thus, the appellate court reversed the trial court's judgment and rendered a judgment the insured university take nothing. *Lloyd's Syndicate v. Baylor Coll. of Med.*, 2025 WL 309722 (Tex. App.—Houston [14th Dist.] 2025).

D. Life insurance

This case arises from a dispute between potential beneficiaries of a federal employee's life insurance benefits. The insured died of COVID, after initially naming his mother as his beneficiary. He later married and gave a written change of beneficiary to his federal employer, naming his new wife as the beneficiary. Both parties filed for summary judgment. The trial court granted the mother's motion holding since the change of beneficiary did not appear in his employee file and was not received by the insurer, it had not been "received" within the meaning of 5 C.F.R. § 870.802(b) (2025). The Fifth Circuit reversed, holding there was a fact issue that precluded summary judgment for either party and remanded the case back for trial. *Metro. Life Ins. Co. v. Vasquez*, 2025 WL 2795055 (5th Cir. 2025).

III. FIRST PARTY THEORIES OF LIABILITY

A. Unfair Insurance Practices, Deceptive Trade Practices & Unconscionable Conduct

The insured was in a car accident and settled her claims against the person responsible for the accident. Following settlement, she sued her own insurer for Texas Insurance Code violations alleging her insurance agent's conduct resulted in injuries "independent of and apart from" her insurance policy claims. The insurer argued the independent injury exception did not apply to her because her

claim flowed from the denial of her claim for policy benefits. The trial court granted the insurer summary judgment. The insured appealed, with the appellate court holding there are two paths to establishing an insurance code violation. The insured must establish either (1) a "right to receive benefits under the policy" or (2) "an injury independent of a right to benefits." (quoting *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 500 (Tex. 2018)). The appellate court affirmed the trial court's judgment and held the only damages claimed by the insured in this case were predicated on the insurer's obligation to pay her under the policy and therefore were not independent of her right to receive benefits. *Salinas v. Farmers Tex. Cnty. Mut. Ins. Co.*, 2025 WL 339037 (Tex. App.—Corpus Christi 2025) (mem. op).

IV. AGENTS, AGENCY, AND VICARIOUS LIABILITY

A. Individual liability of agents, adjusters, and others

An insured submitted a property damage claim to her insurer after her roof sustained wind damage. A third-party administrator used an insurance adjusting company who sent out an adjuster to investigate the claim. The insurer then denied the claim. The insured sued the adjusting company and the adjuster alleging they failed to properly investigate her property damage claim. The insurer was not named in the suit, and filed a plea in intervention alleging it was the only party liable under the insurance policy. The insured amended her petition to only seek tort claims against the adjuster and that she was not seeking any form of policy benefits. The trial court found in favor of the insured and granted a motion to strike the insurer's plea in intervention. The appellate court held because the insurers had assumed liability for their agents' actions under Tex. Ins. Code §542A.006, the intervention does not expand the scope of facts and issues relevant to the case. "[T]he insurers possessed a justiciable interest in the litigation that was essential to effectively protect the insurers' interests." Therefore, the appellate court reversed holding the trial court abused its discretion by denying the insurer's plea in intervention. *In re Trisura Ins. Co.*, 2025 WL 2094147 (Tex. App.—Corpus Christi July 25, 2025).

B. Insurer's vicarious liability for agent's conduct

After a hailstorm loss, the insured homeowner sued the insurance adjustment firm and individual adjuster for breach of duties under the Tex. Ins. Code, but did not sue the insurer for breach of contract. The insurer intervened and filed a motion to abate and compel appraisal. The insurer also agreed, under Tex. Ins. Code §542A.006, to assume responsibility for the insurance adjuster. The insured homeowner filed a motion to strike the intervention, which the trial court granted without a hearing. The insurer applied for mandamus. The court of appeals granted mandamus holding the trial court abused its discretion by ruling without an opportunity for the insurer to be heard on the motion to strike. The appellate court did not reach the other issues. *In re Certain Underwriters at Lloyd's London,* 2024 WL 5087394, (Tex. App.—Corpus Christi 2024).

This case is a continuation of *In re Certain Underwriters at Lloyd's London,* 2024 WL 5087394, (Tex. App.—Corpus Christi Dec. 11, 2024). On remand, the insureds filed suit against the independent insurance adjuster and his insurance claims company, alleging only a tort cause of action. Again, the insurer attempted to intervene, accepting liability for the insurance adjuster under Tex. Ins. Code Chapter 542A. Again, the trial court struck the insurer's plea in intervention. The appellate court undertook an extensive analysis of the applicable law and concluded that although the insured pled only a tort action, it was based on the contractual agreement between the insured and the insurer. Therefore, despite the artful pleadings, the case still fell squarely under Chapter 542A, and its provisions would govern. The appellate court granted mandamus, ordering the trial court deny the motion to strike the insurer's intervention. *In re Certain Underwriters at Lloyds London,* 720 S.W.3d 749 (Tex. App.—Corpus Christi 2025).

V. THIRD PARTY INSURANCE POLICIES & PROVISIONS

A. Automobile liability insurance

The insured was struck by an underinsured motor vehicle while crossing the street. The insurer paid the single, per person policy limit to the insured. The insured's mother was also an insured under the policy and witnessed the injury. The mother made a claim for an additional policy limit asserting that her bystander's claim was independent and not derivative of her daughter's claim. The trial court granted summary judgment in favor of the insured.

The appellate court reversed holding the policy language decided the issue, and that it was immaterial whether the mother's claim was direct or derivative. The insurance policy described the per person limit as limited to "all damages for bodily injury sustained by any one person." The court held that limit incorporated all claims that arose from that person's injuries, so the insurer owed only one limit. *Farmers Tex. Cnty. Mut. Ins. Co. v. Blanek*, 719 S.W.3d 635 (Tex. App.—Houston [14th Dist.] 2025, no pet.).

B. Homeowners liability insurance

This case begins with an accidental shooting. The homeowner's insurer filed a declaratory judgment action, asserting it had no duty to defend or indemnify because the defendant was not an insured under the policy. The defendant, a 19-year-old daughter of the policyholder, had moved into an apartment and out of the insured household. She maintained that she fell under the definition of an insured since although she did not live in the insureds' household, she was under the age of 24 and had moved out of the insureds' household to attend school full time.

The insurer moved for summary judgment on this issue, which the trial court granted. On appeal, the appellate court did an extensive analysis of the rules governing insurance policy construction. It also discussed in detail the Monroe exception to the eight corner's rule. (*Monroe Guar. Ins. Co. v. BITCO Gen. Ins. Corp.*, 640 S.W.3d 195, 198 (Tex. 2022)). The appellate court affirmed the trial court judgment, holding the insurer's summary judgment evidence was sufficient to establish, outside of the pleadings, that the claimant was not an insured under the definition of the policy. *Beasley v. Allied Trust Ins. Co.*, 2025 WL 1278112 (Tex. App.—Tyler 2025, pet. denied).

C. Employment liability insurance

An employee was shot and killed by a coworker after she stepped out the back door of where she worked to retrieve supplies. The employee's mother filed a workers' compensation claim, but the insurer denied the claim because the employee's death arose out of an act of a third person who intended to injure her because of personal reasons and the act was not directed at her as an employee. The employee's mother did not attempt to initiate a proceeding against the insurer in the Tex. Dept. of Ins.—Division of Workers' Compensation (DWC) but filed suit in state court alleging

negligence against the employer. The employer filed a motion for summary judgment and plea to the jurisdiction, which the court granted. The employee's mother appealed.

The employer argued that the DWC is invested with exclusive jurisdiction to determine the question of whether the claimant suffered a compensable injury. At the time the employer filed its motion in the trial court, the Texas Supreme Court had not yet addressed the issue of whether an injured employee must initiate and resolve a proceeding for workers' compensation before it can proceed with a suit against the employer. *Univ. of Tex. Rio Grande Valley v. Oteka*, 704 S.W.3d 1 (Tex. App—Corpus Christi 2023) (*Oteka I*).

Following a petition for review in *Oteka I,* the Texas Supreme Court held the DWC does not have exclusive jurisdiction to determine whether an injury occurred in the course and scope of employment when (1) the employer raises the issue as an affirmative defense outside the compensability context and (2) the employee's requested relief does not depend on any entitlements to benefits. *Univ. of Tex. Rio Grande Valley v. Oteka,* 715 S.W.3d 734 (Tex. 2025) (*Oteka II*). Because both of the conditions set out in *Oteka II* are present here, the appellate court reversed the trial court's judgment and remanded the case for proceedings in the trial court consistent with the Texas Supreme Court's decision in *Oteka II*. *Sanchez v. K& C Chicken 2, L.L.C.*, 2025 WL 2247539 (Tex. App.—Eastland 2025).

D. Professional liability insurance – Errors & omissions

An injured party sued a trucking company and its employee for injuries in a car accident. The injured party sent a Stowers demand which the insurer rejected and then recovered more than policy limits at trial. The insured trucking company sued its insurer for failing to settle the lawsuit within policy limits and sued the law firm the insurer hired to defend the lawsuit for negligence. The trial court held that the law firm's alleged negligence was not a substantial factor in the decision not to settle the case for policy limits and granted the law firm's motion for summary judgment, finding there was (1) no genuine issue of material fact as to the element of causation and (2) fee forfeiture was not an available remedy for its breach of fiduciary duty claim. The appellate court affirmed, noting the insurer paid the attorneys' fees, not the employer, so the law firm had no fees from the employer to disgorge. *Unimex Logistics, L.L.C. v. Guerra*, 2025 WL 1912194 (Tex. App.—Corpus Christi 2025).

VI. DUTIES OF LIABILITY INSURERS

A. Duty to defend

The insurer denied coverage and refused to defend in this oil well dispute. The insured subsequently filed for bankruptcy and assigned its claim to BPX Production Co. The insurer filed a 12(b)6 motion claiming that (1) it had no duty to defend since the contractually required "settlement conference" was not an alternative dispute mechanism recognized in the policy, (2) the insured's bankruptcy negated the insurer's duty to indemnify, and (3) Texas law does not recognize common law bad faith in this third party context. The trial court, through a magistrate's ruling, granted the motion on all counts. The case goes into a lengthy discussion on these issues before reversing the trial court's order on the first two issues. The Fifth Circuit, relying on Texas law, held the "settlement conference" was an alternative dispute proceeding triggering the insurer's duty to defend and that the duty to indemnify survived the bankruptcy. The Fifth Circuit affirmed the order on the common law bad faith issue. This case should be read in conjunction with *Rocor Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 77 S.W.3d 253 (Tex. 2002). *BPX Prod. Co. v. Certain Underwriters at Lloyd's London*, 2025 WL 2952911 (5th Cir. 2025).

B. Duty to indemnify

The insured was a city police officer who, in an off-duty incident, confronted a 70-year-old motorist in an aggressive manner. The motorist suffered a fatal heart attack as a result and a civil suit resulted. The pleadings in the case alleged, among other things, "excessive force" and "false/unlawful arrest and detention." After initially defending the officer, the insurer withdrew its defense after the officer plead guilty to several related criminal charges. The insurance policy contained a criminal activity exclusion. On an assignment, the plaintiffs tried the coverage case before the bench and received a judgment against the insurer for one million dollars. In reversing the judgment, the appellate court held the criminal acts exclusion applied to both the duty to defend and the duty to indemnify, reversing the judgment and rendering in favor of the insurer. *Tex. Mun. League Intergovernmental Risk Pool v. Fierro*, 2025 WL 3009033 (Tex. App.— Texarkana 2025).

VII. THIRD PARTY THEORIES OF LIABILITY

A. *Stowers* duty & negligent failure to settle

The insured lost in trial with a judgment in excess of its policy limits. Prior to trial, the injured party offered to settle within the policy limits. *G. A. Stowers Furniture Co. v. Am. Indem. Co.*, 15 S.W.2d 544 (Tex. Comm'n App. 1929, holding approved). The insurer filed a declaratory judgment action in federal court seeking a declaration it did not owe the excess judgment. The insured moved for summary judgment and filed a motion to dismiss, arguing the federal court should decline jurisdiction based on the Trejo factors. *See St. Paul Ins. v. Trejo*, 39 F.3d 585 (5th Cir. 1994). The insurer then filed its own motion for summary judgment which the trial court granted.

The two issues on appeal were 1) should the trial court have declined jurisdiction, and 2) did it err in granting the insurer's motion for summary judgment? The Fifth Circuit agreed the trial court should have declined jurisdiction as the *Stowers* action was essentially a tort claim based on Texas state law. Consequently, the Court did not reach the substantive *Stowers* issues. *Golden Bear Ins. Co. v. 34th S&S L.L.C.*, 2025 WL 817588 (5th Cir. 2025).

VIII. SUITS BY INSURERS

A. Indemnity & contribution

Under a reinsurance treaty, a reinsurer agreed to indemnify an insurer for a portion of claims made related to short-term medical insurance policies. In return, the insurer had to give prompt notice of any claims to the insurer which may result in a claim for policy benefits. The treaty required the reinsurer to indemnify 25 percent of the insurer's cost on covered policies, including litigation expenses.

An insured made a claim against the insurer relating to a short-term medical insurance policy asserting the insurer underestimated what charges were reasonable and customary. The insured also argued that the insurer used repricing software to systematically over-discount claims. The district court granted partial summary judgment for the insureds on their breach of contract claims be-

cause the insurer was underestimating the reasonable and customary charges for the insured's cancer treatment. The district court also granted the insureds' motion for class certification. The insurer filed a petition for interlocutory appeal on class certification, but the petition was rejected. A month after the rejection of the interlocutory appeal, the insurer notified the reinsurer of the litigation. In the district court, the court held the reinsurance treaty was not breached because prompt notice was triggered only once the insurer realized the litigation may require indemnification from the reinsurer.

The reinsurer appealed to the Fifth Circuit. The Fifth Circuit reversed, holding the insurer had to notify the reinsurer promptly so it could exercise its defense rights. When the insurer was sued, it failed to give notice until after the district court entered judgment for individuals and certified a class, and after the Ninth Circuit denied a petition for interlocutory appeal. Because the insurer's delay was unreasonable and material, it breached the treaty and absolved the reinsurer of its duty to indemnify. *U.S. Fire Ins. Co. v. Unified Life Ins. Co.*, 147 F.4th 583 (5th Cir. 2025).

B. Subrogation

The insurer paid medical benefits following a car accident in which its insured was injured. The medical payment provision of the insurance policy granted the insurer subrogation rights against the at-fault motorist recovery. The insured moved for summary judgment claiming the insured's expenses (including attorney's fees) should be apportioned against the insurer's subrogation claim under the common fund doctrine. The trial court granted summary judgment in favor of the insured. The appellate court reversed, holding there was a fact issue as to whether the common fund doctrine applied to the case. "The doctrine's applicability is not determined by whether the insurer assists in pursuing the insured's claims; it is determined by whether the insurer assists in pursuing the insurer's claim, and the insurer can do so independently of the insured's suit against the tortfeasor." *Allstate Fire & Cas. Co. v. Nguyen*, 715 S.W.3d 425 (Tex. App.—Houston [14th Dist.] 2025, no pet.).

IX. DAMAGES & OTHER ELEMENTS OF RECOVERY

A. Attorney's fees

The insured filed a claim for water damage. The insurer inspected the property and denied the claim, alleging the water lean was not "sudden and unexpected" and therefore excluded. The policy contained a shortened limitation on filing suit of two years from the date a claim is denied. The insured filed suit more than two years after their claim was denied. The insured also alleged fraud as a counter to the limitations defense. The trial court granted summary judgment for the insurer. The insured appealed. The appellate court affirmed the trial court judgment but reformed the award of appellate attorney's fees since the judgment had not made these fees conditional on a successful appeal. Finally, the appellate court denied the insurer's cross appeal on attorney's fees under the declaratory judgment statute noting these fees were discretionary with the trial court. *Lopez v. State Nat'l Ins. Co.*, 2025 WL 2726535 (Tex. App.—Corpus Christi 2025).

X. DEFENSES & COUNTERCLAIMS

A. Accord & satisfaction

This case arises out of a disputed settlement. The insured's art studio was burglarized. He filed a claim with the insurer, filed suit, and then the suit was removed to federal court. The parties mediated, and the insurer claimed the case had settled. The insurer filed suit to enforce the settlement, and both parties moved for summary judgment. The trial court granted the insurer's motion and denied the insured's motion. The appellate court held fact issues remained. Specifically, the deduction of attorney's fees from the settlement, indemnification and dismissal of the extra-contractual claims were provisions added by the insured's proposed settlement documents. The case contains an outline of the elements of contract and breach of contract in this context. The appellate court reversed the summary judgment and remanded the case to the trial court. *Ibrahim v. Sentinel Ins. Co.,* Ltd., 2025 WL 1261865 (Tex. App.–Dallas 2025, no pet.).

The insurer filed suit to enforce the settlement, and both parties moved for summary judgment.

B. Limitations

A suit on a performance bond must be filed within one year of the contractor's completion, termination or abandonment of the public works contract. Tex. Gov't Code § 2253.078(a). The trial court denied the bond insurer's motion for summary judgment on this issue. The appellate court allowed a permissible appeal, then affirmed the judgment. The appellate court construed the performance bond as incorporating the details of the contract between the county and the contractor. It then held since the insurer did not notify the county it was declining to complete the contract on its own, as the insuring agreement allowed, the one year did not begin running before that notice date. *Great Am. Ins. Co. v. Williamson Cnty.,* 2025 WL 2080381 (Tex. App.—Austin 2025).

XI. PRACTICE & PROCEDURE

A. Choice of law

A tornado struck an insured's distribution center in Texas. The distribution center's principal place of business was in Illinois. The distribution center hired an insurer to insure the merchandise in the distribution center. The insurer is incorporated in Texas with its principal place of business in New York. The insured distribution center filed suit against its insurer in Texas for violations of the Tex. Ins. Code and breach of contract after the insurer failed to pay the claim. The trial court ruled New York law applied to the suit and gave permission to the insured to file

an interlocutory appeal. The appellate court agreed New York law applied because that is where the claims handling process and denial of insurance proceeds occurred. The insured's legal injury was the denial of its insurance claim, and the decision to deny the claim was made by the insurer in New York. This did not bode well for the insured as New York law does not recognize claims for common-law bad faith and does not permit recovery of attorney's fees for breach of contract. *Transform Holdco, L.L.C. v. Starr Indem. & Liab. Co.*, 2025 WL 1677242 (Tex. App.—Dallas 2025).

A. Jurisdiction

An insurer was sued for underinsured motorist benefits. This case stems from an interlocutory appeal after the trial court overruled the insurer's special appearance. The insurer was a Michigan based company doing business in Florida when it sold the policy at issue. At the time of purchase, the insured was a Florida resident. In overruling the trial court and sustaining the insurer's special appearance, the appellate court goes into considerable detail about the law on long arm jurisdiction. In summary, it notes the insurer took no deliberate action to conduct business in Texas, had no substantial contacts with the state, and that accepting premiums for the policy which were mailed from Texas was not enough to satisfy due process requirements. *Auto-Owners Ins. Co. v. Millionder,* 2025 WL 375847 (Tex. App.—Houston [1st Dist.] 2025, no pet.).

B. Discovery

In this underinsured motorist case, the insurer sought mandamus after the trial court denied its motion to segregate the underlying car wreck from the "bad faith" allegations. The insurer also sought to quash the corporate representative's deposition. The Texas Supreme Court granted both requests. The Court held the insurer had a right to determine its liability in the underlying tort case, either by way of severance or bifurcation with separate trials, before proceeding to the Texas Insurance Code bad faith issues. The Court also held that under the circumstances of this case, the insurer was entitled to quash the corporate representative's deposition. The Court looked back at its recent decision in *In re USAA General Indemnity Co.*, 624 S.W.3d 782 (Tex. 2021) and distinguished it based on the parties' discovery responses prior to the deposition request, relying primarily on proportionality. This opinion goes into considerable detail in its analysis and answers questions that were raised in the earlier cases on these issues. *In re State Farm Mut. Auto. Ins. Co.*, 712 S.W.3d 53 (Tex. 2025).

C. Experts

In a car accident case, the jury issued a final take-nothing jury verdict on personal injury claims made by a party. The jury found both parties equally negligent in causing the accident. The injured party appealed. The treating doctors supported the injured party's claims that the accident at issue was the cause of the injuries for which they were seeking treatment. However, evidence was presented that the party had been injured in car accidents previously and also facts supporting that both parties contributed to causing the accident. The appellate court held the nature of the injuries and their causation was a fact issue for the jury, and the jury was free to disregard the testifying experts' testimony on both the necessity of treatment and the causal relationship between the accident and the parties' complaints. Therefore, the appellate court affirmed the trial court's judgment. *Blanco v. Barton*, 715 S.W.3d 433 (Tex. App.—Houston [14th Dist.] 2025).

The jury was free to disregard the testifying experts' testimony on both the necessity of treatment and the causal relationship between the accident and the parties' complaints.

An insured sued her insurer and one of its adjusters for uninsured-motorist benefits after she was injured in a car accident. The insured sought recovery of her reasonable and necessary medical expenses, and in support of those, timely served affidavits from her doctors. The insurer did not controvert the insured's affidavits with counter affidavits as allowed under Tex. Civ. Prac. & Rem. Code section §18.001. Instead, the insurer designated certain retained and non-retained experts to address the insured's medical treatment and expenses. The insured moved to exclude this testimony arguing that because the insurer never served section 18.001 counter-affidavits its expert was not allowed to testify as to the reasonableness of her medical expenses. The trial court agreed and granted the insured's motion to exclude the insurer's expert witness. The appellate court reversed, holding that "nothing in the statute suggests that a party's failure to comply with section 18.001(f) demonstrates that party lacked [or waived] the intent to controvert the initial affidavit." Therefore, the appellate court instructed the trial court to vacate its order granting the insured's motion to exclude the insurer's expert witness. *In re State Farm Mut. Auto. Ins. Co.*, 2025 WL 2164003 (Tex. App.—Dallas 2025).

D. Arbitration

The insured owned a commercial building that was damaged by a hailstorm and submitted a claim. The insurer denied coverage. The insured sued asserting wrongful denial of an insurance claim and claims for violations of the Texas Insurance Code. The insurer invoked the arbitration agreement, but the trial court denied the

motion to compel arbitration. On appeal, the insurer raised two issues. However, neither of those issues addressed the insured's argument in the trial court that the arbitration agreement was unenforceable because the policy contained conflicting dispute resolution provisions. Therefore, the appellate court affirmed the trial court's denial of the motion to compel arbitration because the insurer did not challenge all independent grounds argued by the insured in the trial court that, if meritorious, would fully support the trial court's ruling. The insurer's response to the insured's argument in its reply brief came too late. *Ind. Specialty Ins. Co. v. Blossoms Montessori Sch., Inc.*, 2025 WL 1583577 (Tex. App.—Houston [1st Dist.] 2025).

A. Appraisal

The insured sued his homeowners' insurer for storm-related property damage. After the insurer paid the appraisal award, the insurer sued in state court for Texas Insurance Code violations and for policy benefits. The insurer removed the case to federal court where the trial court granted summary judgment for the insurer. On appeal, the Fifth Circuit affirmed the trial court judgment, holding all of the damages claimed by the insured arose from their claim. Since the insurer paid the appraisal, no further relief was available. The appellate court referenced its earlier opinion in *Mirelez v. State Farm Lloyds,* 127 F.4th 949 (5th Cir. 2025). *Frederich v. Trisura Specialty Ins. Co,* 2025 WL 2840272 (5th Cir. 2025).

After the insurer paid a weather-related loss following an appraisal award, the insured pursued a lawsuit for additional damages. Following its earlier opinion in Mirelez v. State Farm Lloyds, 127 F.4th 949, 953 (5th Cir. 2025), the Fifth Circuit affirmed summary judgment for the insurer. *Dillen v. LBE Ins.C.*, 2025 WL 2978442 (5th Cir. 2025).

An insured's property was damaged from an explosion nearby. The insurer sent an adjuster out who valued the damage at a low amount. The insured hired an independent adjuster who found the damage to be higher, and she then invoked the appraisal clause in her insurance contract. Each side appointed an appraiser, and those appraisers chose an umpire. The umpire sent his award, which ended up being less than the insurer had already paid. The insurer's appraiser immediately signed the award, while the insured's appraiser noted the award did not include personal property and fencing. The umpire voided the first award and later issued an award for more than four times the amount of the first award. The insurer filed a motion to set aside the second award arguing a binding agreement was made when its appraiser signed the first award. The trial court agreed and ruled to set aside the second award and also granted the insurer's no evidence motion for summary judgment. The insured appealed. The appellate court held the first award did set the amount allowed for the dwelling. However, the appellate court reversed the granting of summary judgment in favor of the insurer because there is evidence the first award only covered damages to the dwelling, and that the contents of the property were to be addressed in a separate award. Additionally, the court held the insured's appraiser was not a representative of the insured such that he had to submit to an examination under oath as required by representatives under the policy. *Mallady v. Homeowners of Am. Ins. Co.*, 2025 WL 2253722 (Tex. App.—Houston [14th Dist.] 2025).

The insureds made a property damage claim under their homeowner's policy. The insurer denied the claim, and a lawsuit followed. The insurer moved to abate and compel appraisal. The trial court denied the motion for appraisal, and the insurer sought mandamus. The insureds raised several arguments in support of the trial court's ruling. First, they argued waiver because of various delays in asking for appraisal and then delays in requesting reconsideration of its motion. The insureds also argued that appraisal was a covenant and not a condition precedent. The appellate court goes into considerable detail addressing these arguments and, in the end, grants mandamus, ordering the trial court to vacate its order denying appraisal and enter an order granting same. *In re Germania Farm Mut. Ins. Ass'n,* 2025 WL 2053955 (Tex. App.—Corpus Christi 2025).

This case begins by noting that coverage disputes between insureds and TWIA are subject to judicial review, but disputes on the amounts of damages are exclusively determined by appraisal. On that basis, TWIA moved for summary judgment which the trial court granted. The dispute centered around the insured's documentation for recoverable depreciation. The insured characterized this dispute as a policy condition and not a dispute over the amount of damages. The appellate court agreed, reversed the summary judgment and remanded the case back to the trial court for further consideration. *Allen v. Tex. Windstorm Ins. Ass'n*, 2025 WL 2797280 (Tex. App.—Corpus Christi 2025).

A. Evidence

The trial court struck the insurer's expert on the reasonableness of the insured's medical bills since the insured's affidavit under Tex. Civ. Prac. & Rem. Code § 18.001 had not been controverted. Relying on the Texas Supreme Court opinion in In re Allstate Indemnity Co., 622 S.W.3d 870 (Tex. 2021) (orig. proceeding), the appellate court held it was an abuse of discretion to strike the expert. The insured argued that the holding in Allstate applies only when a defective counter affidavit is filed – not when no counter affidavit is attempted. The appellate court brushed away that distinction restating that section 18.001 is not an exclusionary rule but simply relieves the filing party from its burden of proof on the reasonableness issue if the affidavit is not countered. The appellate court ordered the trial court to vacate its order striking the insurer's expert. *In re State Farm Mut. Auto. Ins. Co.*, 2025 WL 2164003 (Tex. App.— Dallas 2025).

XII. OTHER ISSUES

A. Excess & primary coverage

This case is an appeal from a summary judgment in favor of the insured. The dispute was over defense cost in an excess, following policy. The insured argued that since the primary policy provided for defense cost, the following excess policy should do the same. The Texas Supreme Court began its analysis by looking at the terms of the excess policy and noting that even though it was a following policy, the language of the excess policy will determine the obligations of the excess carrier. As with many such cases, the devil was in the details.

The Texas Supreme Court focused on the excess policy's definition of "loss" and concluded that it did not cover defense costs. It rejected the insured's argument that since the primary policy covered defense cost, the excess following policy must also specifically include the expense. The insured also sued its insurance agent in the alternative for failing to procure an excess policy that covered defense cost. The Texas Supreme Court remanded that action to the trial court. *Ohio Cas. Ins. Co. v. Patterson-UTI Mgmt. Servs.,* 703 S.W.3d 790 (Tex. 2024).

This is a COVID-19 coverage dispute involving a primary policy and several layers of following, excess policies. The trial court granted summary judgment to all the insurers. The insured appealed. The appellate court, relying on the holding in Ohio Cas. Ins. Co. v. Patterson-UTI Mgmt. Servs., 703 S.W.3d 790 (Tex. 2024), held that each excess policy must be evaluated under its own terms and not exclusively under the terms of the primary policy which they followed. After a detailed analysis of each excess policy, the appellate court affirmed as to some and reversed and remanded as to others. *TRT Holdings, Inc. v. Ace Am. Ins. Co.*, 2025 WL 2694458 (Tex. App.—Dallas 2025).

B. Worker's Compensation

A worker's compensation insurer entered into a settlement agreement with an injured worker who was permanently paralyzed as a result of a car crash. The insurer agreed to pay the injured worker a set sum per month for home health care. Almost thirty years after the crash, the insurer filed a motion to terminate home health care services. The injured worker sought relief from the courts and DWC. A jury returned a verdict against the insurer and awarded the injured worker over $750,000 plus attorneys' fees. The insurer appealed.

Following *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W. 3d 430 (Tex. 2012), the appellate court held the trial court improperly submitted the question of the insurer's bad faith liability to the jury. The appellate court also reversed the award for attorneys' fees holding the insurer sought and failed to obtain relief under a written contract, but the injured worker did not successfully prosecute his own claim for breach of contract and therefore was not entitled to recover attorneys' fees in connection with the insurer's motion. *Sentry Ins. v. Bristow,* 2025 WL 2076877 (Tex. App.—Eastland 2025).

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1 *In re State Farm Mut. Auto. Ins.* Co., 712 S.W.3d 53 (Tex. 2025).

2 *BPX Prod. Co. v. Certain Underwriters at Lloyd's London,* 2025 WL 2952911 (5th Cir. 2025).

3 *Rodriguez v. Safeco Ins. Co. of Ind.*, 684 S.W.3d 789 (Tex. 2024); *Mirelez v. State Farm Lloyds*, 127 F.4th 949 (5th Cir. 2025); *Frederich v. Trisura Specialty Ins.* Co., 2025 WL 2840272 (5th Cir. 2025); *Dillen v. LBE Ins. Co.*, 2025 WL 2978442 (5th Cir. 2025); *Salinas v. Farmers Tex. Cty. Mut. Ins. Co.*, 2025 WL 339037 (Tex. App.—Corpus Christi Jan. 2025) (mem. op.).

4 *In re Trisura Ins. Co.*, 2025 WL 2094147 (Tex. App.—Corpus Christi 2025); *In re Certain Underwriters at Lloyd's London,* 2024 WL 5087394 (Tex. App.—Corpus Christi 2024).

5 *Golden Bear Ins. Co. v. 34th S&S L.L.C.*, 2025 WL 817588 (5th Cir. 2025).