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Annual Survey of Texas Insurance Law

RECENT DEVELOPMENTS

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The editors welcome unsolicited lead articles written by practicing attorney, judges, professors, or other qualified individuals. Manuscript length should be approximately 15-30 typed, double-spaced pages. Endnotes should conform to the 21st Edition of A Uniform System of Citation, published by the Harvard Law Review Association.

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Annual Survey of Texas Insurance Law

By Suzette E. Selden* & Henry Moore**

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.

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).

Legislative Update

Jon-Ross Trevino* and Newton Tamayo**

2025 was a busy year for new state consumer law protections as the legislature was in regular session.

Senate Bill 140, effective September 1, 2025, expanded the definition of a phone call for purposes of telemarketing.

Solar Panels

In response to the increase in deceptive solar panel transactions, the Texas Legislature passed Senate Bill 1036. Effective September 1, 2025, the new law preempts Tex. Bus. & Com. Chapter 601, extending the time to cancel the solar contract without penalty from 3 days to 5 days after the parties executed the contract.[1] Other changes include requiring the contract to include language stating that the electrical system work will be completed by a licensed electrician (including the license number of the electrician), specifying in the contract that either the solar retailer or electrician will obtain permitting for the project if required by law, and making financing terms more conspicuous.[2] On September 1, 2026, salespeople will be required to be registered with the Texas Department of Licensing and Regulation, and stricter advertisement requirements and specific sales tactics will be more regulated.[3]

Protections for identity theft victims

Texas House Bill 4238 took effect on September 1, 2025, strengthening protections for identity theft victims.[4] The law does not apply if there is already a judgment nor does it apply for a home loan as defined by the Texas Finance Code. However, if a court has entered a judgment establishing the consumer as a victim of identity theft under Tex. Bus. & Com. Code chapter 521, the portion of the debt "that is a result of the identity theft described by the court order" can be disputed.[5] Once the creditor has notice that the consumer debt is a result of identity theft, the creditor: 1) must cease collections within seven business days, 2)send notice to everyone they reported the debt that the consumer debt is disputed and the victim of identity theft is not collectible, and 3) may not sale or transfer the debt, other than to collect from the perpetrator or someone else responsible who is not the victim of identity theft.[6] An exception applies if the debt is secured by tangible personal property, under Chapter 9, Bus. & Com. Code.[7] In such cases, the creditor may enforce the security interest but is prohibited from pursuing any deficiency collection against the victim of the identity theft. [8]

Telemarketing

Senate Bill 140, effective September 1, 2025, expanded the definition of a phone call for purposes of telemarketing solicitation to include a text message or picture.[9] Phone numbers on the Texas No-Call list will include the laws expanded definition.[10] The statute is updated to be a tie-in statute to the Deceptive Trades and Practices Act, and a violation of the act is a "false and misleading or deceptive act or practice under Subchapter E" of the DTPA.[11]

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1 Tex. Occ. Code § 1806.006 and § 1806.156.
2 Tex. Occ. Code § 1806.155
3 Tex. Occ. Code § 1806.201 and § 1806.208.
4 Tex. Fin. Code § 392.308
5 *Id.*
6 *Id.*
7 *Id.*
8 *Id.*
9 Tex. Bus. & Com. Code § 302.001
10 Tex. Bus. & Com. Code § 304.052.
11 Tex. Bus. & Com. Code § 304.2581.

DECEPTIVE TRADE PRACTICES AND WARRANTY

PLAINTIFF'S WHOSE CLAIM ORIGINATES FROM REINSTATEMENT OF A LOAN, BASED ON THE REINSTATEMENT OF THE NOTE, IS NOT A CONSUMER UNDER THE DTPA

Muehlenhaupt v. PHH Mortg. Corp., 2025 U.S. Dist. LEXIS 375464 (N.D. Tex. 2025).
https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2024cv03210/398163/15/

FACTS: Pete Muehlenhaupt ("Plaintiff"), defaulted on his mortgage loan with Defendant, PHH Mortgage Corporation ("PHH") by failing to keep up with monthly payments. As a result a foreclosure sale was scheduled. Plaintiff alleged PHH told him that if he paid roughly $17,400 before the sale, the note would be reinstated and the sale canceled. Plaintiff paid $19,700, but PHH proceeded with the foreclosure sale. Plaintiff sued PHH in state court for a violation of the Deceptive Trade Practices Act ("DTPA") and other claims. PHH removed the case to federal court and brought a motion to dismiss for failure to state a claim.
HOLDING: Granted.
REASONING: Plaintiff argued PHH breached the DTPA. However, the court found Plaintiff was not eligible to make a claim under the DTPA, holding that to pursue a claim under the DTPA the plaintiff must meet the statute's definition of a "consumer."

His complaint did not arise from the purchase or lease of any "goods or services."

The DTPA's definition of a consumer is an individual who purchases or leases any "goods or services."] "Goods" are defined as "tangible" or "real property" that is purchased or leased. Plaintiff's claim was based on the reinstatement of the loan on property he already owned, which was based on the reinstatement of the note. Therefore, his complaint did not arise from the purchase or lease of any "goods or services." Thus, Plaintiff was not a consumer under the DTPA.

ECONOMIC LOSS RULE DOES NOT PRECLUDE RECOVERY OF MENTAL ANGUISH DAMAGES AND TREBLE DAMAGES UNDER THE DTPA WHEN PLAINTIFFS PROVE MORE THAN A MERE BREACH OF CONTRACT

EXPERT TESTIMONY IS NOT REQUIRED TO ESTABLISH THE NECESSITY AND REASONABLENESS OF HOME REPAIRS WHEN THE REPAIRS ARE NOT SO TECHNICAL OR COMPLEX AS TO BE BEYOND JURORS' COMMON UNDERSTANDING

LAY TESTIMONY CAN BE SUFFICIENT TO ESTABLISH THE REASONABLENESS OF REPAIR COSTS

Shafaii Invs., Ltd. v. Rivera 2025 Tex. App. LEXIS 322202 __S.W. 3d__ (Tex. App. –Houston [1st] 2025).
https://law.justia.com/cases/texas/first-court-of-appeals/2025/01-21-00731-cv.html

FACTS: Rivera and Angelino ("Appellees") bought townhomes from Shafaii Investments, Ltd and Raj Shafaii ("Appellants"). Appellants told Appellees they would need to purchase insurance for their townhomes through them and pay a monthly fee. After flooding damaged the townhomes Appellees attempted to use the insurance, but Appellants never purchased insurance for either property. Since Appellees had no coverage, they paid for repairs themselves. Appellees then brought a consolidated suit against Appellants, Shafaii Investments, Ltd and Raj Shafaii, claiming breach of contract, fraud, negligence, misrepresentation, and violations of the Texas Deceptive Trade Practices Act ("DTPA"). A district court jury found for the Appellees and awarded damages for repair costs, treble damages under the DTPA, mental anguish damages, and attorney's fees. Appellants appealed.
HOLDING: Affirmed.
REASONING: Appellants argued the economic loss rule barred recovery for mental anguish and treble damages under the DTPA and that there was insufficient evidence, including no expert testimony, to support the damages awarded by the jury.

The court rejected Appellant's argument because Appellees proved that the Appellants engaged in false, misleading or deceptive acts when they collected money from the Appellees for insurance without actually purchasing the insurance. The court held the economic loss rule did not bar Appellees from recovering damages for mental anguish and treble damages due to the DTPA violation.

The court also rejected Appellants argument that there was insufficient evidence to support the damages. Expert testimony is only required when the damage at issue is beyond the jurors' common understanding. The cost of repairs to the townhomes were not so technical or complex as to be beyond the common understanding of the jurors. Therefore, the lay testimony of Appellees was sufficient in supporting the awarded damages.

UNLESS UNAMBIGUOUSLY DECEPTIVE, AMBIGUITY ON THE FRONT LABEL CAN MISLEAD REASONABLE CONSUMERS UNDER THE CLRA AND UCL

McGinity v. P&G, 69 F.4th 1093 (9th Cir. 2023).
https://cdn.ca9.uscourts.gov/datastore/opinions/2023/06/09/22-15080.pdf

FACTS: Plaintiff-Appellant Sean McGinity ("McGinity") purchased Pantene Pro-V Nature Fusion shampoo and conditioner from Defendant-Appellee, The Procter & Gamble Company ("P&G"). McGinity believed that the "Nature Fusion" label meant the products were natural. In reality, the products contained synthetic ingredients. McGinity claimed he would not have purchased the products if he had known this and sued P&G under California's Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act.

P&G moved to dismiss McGinity's complaint for failure to allege sufficient facts. The district court granted the motion to dismiss with leave to amend. McGinity's amended complaint was also dismissed by the court for failure to allege sufficient facts. McGinity appealed.

HOLDING: Affirmed.
REASONING: McGinity argued the front label of Nature Fusion products were ambiguous and insinuated an entirely natural product. He further argued the survey impressions proved reasonable consumers were also deceived by the label. P&G argued that a reasonable consumer would not be deceived by the label because there was no specific language stating that none of the ingredients were synthetic.

The court determined that the ambiguity of the front label of the Nature Fusion products could be resolved by consumers checking the ingredients list on the back label. The court previously held that consideration of the back label could only be precluded if the front label was unambiguously deceptive. The Nature Fusion label indicated natural ingredients, but it did not promise that the product was entirely natural. A reasonable consumer confused by the front label could have turned to the back label to see that the product contained both natural and synthetic ingredients. The survey participants did not have the option to view the back label of the products. Therefore, the survey only demonstrated that the Nature Fusion front label was ambiguous, not misleading. The court concluded that no reasonable consumer would have thought that the products were completely or substantially natural.

TEXAS DECEPTIVE TRADE PRACTICES ACT SPECIFICALLY ALLOWS CONSUMERS TO MAINTAIN AN ACTION FOR BREACH OF EXPRESS OR IMPLIED WARRANTY

Taylor Plaza, LLC v. Lucy's Kitchen #2 LLC, 2025 LX 328581 (Tex. App.— 2025).
https://law.justia.com/cases/texas/seventh-court-of-appeals/2025/07-25-00013-cv.html

FACTS: Plaintiff-Appellee, Lucy's Kitchen #2 LLC ("Lucy's"), entered a commercial lease as tenant with Defendant-Appellant, Taylor Plaza LLC ("Taylor"). Lucy's paid a security deposit and first month's rent before beginning renovations to open a restaurant. The premises had a defective and leaking roof that Taylor failed to repair despite repeated requests, preventing Lucy's from completing renovations and opening for business. As a result, Lucy's terminated the lease and filed suit against Taylor, alle

The court determined that Lucy's DTPA claim arose from the implied warranty of suitability.

Lucy's terminated the lease and filed suit against Taylor, alleging violations of the Deceptive Trade Practices Act ("DTPA") and other claims. The jury rendered a verdict in favor of Lucy's. Taylor appealed.
HOLDING: Affirmed.
REASONING: Taylor argued Lucy's DTPA claims were barred as a matter of law because they were contractual in nature.

The court rejected this argument, explaining that §17.50(a)(2) of the Texas Business and Commerce Code expressly authorized consumers to maintain an action for breach of express or implied warranty when such breach was a producing cause of economic damages. Here, the court determined that Lucy's DTPA claim arose from the implied warranty of suitability. Taylor breached this warranty when it failed to repair the leaking roof, rendering the property unfit for restaurant operations. Therefore, the court held that Lucy's properly maintained its DTPA claim for breach of implied warranty.

THE STATE OF TEXAS IS THE REAL PARTY IN INTEREST IN SUIT FILED BY ATTORNEY GENERAL

THE DTPA EXPLICITLY GRANTS THE ATTORNEY GENERAL AND THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, TO BRING SUITS AGAINST PERSONS ENGAGING "IN ANY ACT OR PRACTICE TO BE DECLARED UNLAWFUL" ON BEHALF OF THE STATE OF TEXAS

Texas v. 3M Co., 2025 U.S. Dist. LEXIS 189519 (N.D. Tex. 2025).
https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2025cv00122/398789/44/

FACTS: Defendant 3M sold products to Defendants Old DuPont, New DuPont, and Corteva (collectively, "Defendants") that were then used in a variety of consumer goods. Upon selling, Defendants emphasized the products' resistance to heat, oil, stains, grease, and water. The State of Texas ("Plaintiff") alleged that the companies knew these products posed health and environmental risks and engaged in deceptive trade practices by failing to disclose those risks and by marketing the products as "safe." Plaintiff sued in state court under the Deceptive Trade Practices Act ("DTPA").

Plaintiff filed suit in state court and Defendants removed the action to federal district court. Plaintiff filed a Motion to Remand to state court, claiming that there was no diversity of citizenship.
HOLDING: Remanded.
REASONING: Plaintiff argued the State of Texas was the real party in interest because it was seeking to regulate its economy and marketplace, enforce the laws of Texas, and obtain penalties and injunctive relief against 3M. Plaintiff further argued that because the State of Texas is the real party in interest, it is not a citizen for diversity purposes and the case should be remanded to state court.

Defendants argued that when a state is asserting personal claims of its citizens, it is not the real party in interest, and that the injunction would only benefit Texas consumers who have purchased the Defendants' products, therefore the real party in interest was the people of Texas.

The court found in favor of Plaintiff holding that an entity is the real party in interest when it is statutorily authorized to bring suit to enforce a claim. The DTPA provides "the consumer protection division may bring an action in the name of the state against" persons that have engaged in unlawful practices. Plaintiff seeking redress for the Defendants alleged deceptive practices on behalf of people in Texas does not make the people of Texas the real parties in interest. Because the DTPA explicitly granted the authority to the Attorney General and the Consumer Protection Division to file suit, the State of Texas is the real party in interest.

MERE RECITATION OF THE STATUTORY DTPA LANGUAGE DOES NOT SATISFY RULE 9(b)'S HEIGHTENED PLEADING REQUIREMENT

UNDER TEXAS LAW, GENERAL MARKETING MATERIALS ARE INSUFFICIENT TO CONSTITUTE A WARRANTY

Quinones v. REV Renegade, LLC, 2025 U.S. Dist. LEXIS 165598 (N.D. Ind. 2025). https://law.justia.com/cases/federal/district-courts/indiana/inndce/1:2025cv00182/122243/23/

FACTS: Plaintiffs, Josh Quinones and Nila Hatmi Madani (collectively, "Plaintiffs"), purchased an RV assembled by Defendant REV Renegade, LLC ("REV"). Defendant Firefly ("Firefly") manufactured components of the RV and Defendant Cummins Inc. ("Cummins") manufactured the engine. Plaintiffs claimed the RV had several defects upon delivery and developed others over time.

Plaintiffs sued all three Defendants alleging several causes of action including a violation of the Texas Deceptive Trade Practices Act ("DTPA") and breach of warranty claims. Plaintiffs' complaint asserted Firefly and Cummins violated the DTPA and listed the relevant DTPA statutory provisions. For the breach of express warranties, the complaint broadly claimed that Defendants' "advertisements and statements in written promotional and other materials" amounted to a warranty.

Plaintiffs filed a complaint in state court against REV, Firefly, and Cummins with the same three claims. Defendants Firefly and Cummins both filed a motion to dismiss for failure to state.

HOLDING: Granted.

REASONING: Plaintiffs argued the DTPA violation section of the complaint was sufficiently pled. The court rejected this argument by noting that Rule 9(b)'s heightened pleading standard applied to Texas DTPA claims. To satisfy rule 9(b), "a plaintiff must specify the statements contended to be fraudulent, identify the speaker, and state when and where the statements were made, and explain why the statements were fraudulent." The court held the complaint recited elements of the DTPA but provided no specific facts on how the Defendants supposedly committed a false, misleading, or deceptive act. Because Plaintiff's complaint was conclusory and did not allege specific facts relevant to a claim against any individual defendant, it did not meet Rule 9(b)'s heightened pleading standard and was, therefore, deficient.

Under Texas law, general marketing materials are insufficient to constitute a warranty.

For the breach of warranty claim, Plaintiffs argued Cummins and Firefly's advertisements and promotional materials amounted to a warranty. The court disagreed with this argument, finding again that Plaintiffs' complaint did not identify any specific warranties that Cummins or Firefly provided. Under Texas law, general marketing materials are insufficient to constitute a warranty. Because the complaint neither differentiated between Defendants nor identified any warranties that either Defendant specifically provided, Plaintiffs did not properly state a claim against Defendants. Therefore, their general marketing materials were insufficient to constitute a warranty under Texas law.

HOMEOWNER ESTABLISHES VIOLATION OF DTPA AGAINST CONTRACTOR
CONTRACTOR IS DENIED BANKRUPTCY DISCHARGE

Lindeman v. Nooruddin (In re Lindeman), 2025 Bankr. LEXIS 2711 (Bankr. N.D. Tex. 2025).
https://www.txnb.uscourts.gov/sites/txnb/files/opinions/176051206062.pdf

FACTS: Plaintiff Mansoor Nooruddin ("Nooruddin") hired Defendant Dennis Lindeman ("Lindeman") as his contractor to perform renovations on a home he purchased. Their "Construction Contract" stated Lindeman would renovate the home to "current market standards" within eight weeks. The payment schedule provided that $80,000 would be paid in two-week intervals until the project was completed. Nooruddin obtained a loan from American National Investors Corporation, which created a construction trust to make payments to Lindeman upon his request. With each request, Lindeman included detailed accounts of the tasks completed. However, Nooruddin checked the property multiple times and found that several of those tasks were not done, partially done, or not up to standard. Months after the project was supposed to be finished, Nooruddin terminated the Construction Contract and hired other contractors to finish the renovations and fix what Lindeman had done poorly.

Lindeman filed for relief under the Bankruptcy Code for debts owed to Nooruddin and others, but the United States Trustee filed suit to object. The court sustained the objection and denied Lindeman a discharge. Nooruddin brought suit against Lindeman for several claims, including a DTPA violation for the misuse of construction trust funds.

HOLDING: Sustained.

REASONING: Nooruddin argued Lindeman committed a wrongful act under the DTPA and falsely represented that work or services have been performed.

A DTPA claim requires a plaintiff to establish that (i) they were a consumer, (ii), the defendant committed a qualified wrongful act, and (iii) the defendant's actions were the cause of the plaintiff's economic damages. A "consumer" is defined by the DTPA as "an individual who seeks or acquires by purchase or lease, any good or services." Nooruddin paid for Lindeman's services to renovate his home, therefore he was a consumer.

Upon Nooruddin's inspection of the home, he found peeling paint, unevenly installed light switches, and laminate flooring instead of hardwood, despite Lindeman's contrary representations. Consequently, Nooruddin had to pay other contractors and incur out-of-pocket expenses to complete and fix Lindeman's work.

Therefore, Nooruddin, as a consumer, suffered economic damages as a direct result of Lindeman's wrongful misrepresentation. The court held the facts satisfied a DTPA violation.

PLAINTIFFS FAILED TO PLAUSIBLY ALLEGE THAT METROPOLIS' EFFORTS TO ENFORCE THE TERMS OF THE POSTED PARKING AGREEMENTS WERE UNCONSCIONABLE, THAT METROPOLIS FALSELY IMPERSONATED OR IMPLIED AN AFFILIATION WITH A GOVERNMENT AUTHORITY, OR THAT IT ILLEGALLY THREATENED TO TOW OR BOOT PLAINTIFFS' VEHICLES.

COMPLAINT LACKS SUFFICIENT FACTUAL ALLEGATIONS ENABLING A REASONABLE INFERENCE OF RELIANCE ON CONDUCT OF DEFENDANT, OR THAT ITS ACTIONS ARE UNCONSCIONABLE UNDER THE DTPA PLAINTIFFS FAIL TO PLAUSIBLY ALLEGE THAT METROPOLIS IS A DEBT COLLCTOR AS DEFINED BY THE FDCPA

Frankfort v. Metropolis Techs., Inc., 2025 U.S. Dist. LEXIS 182447 (N.D. Tex. 2025).
https://scholar.google.com/scholar_case?case=13100362320608484408&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Goodban, Frankfort, and Gutierrez (collectively, "Plaintiffs"), filed a class action against Metropolis Technologies, Inc. ("Metropolis"), after they incurred violation fines at a Texas Metropolis garage for failing to pay parking fees. In their complaint, Plaintiffs alleged Metropolis used inconspicuous signs and undisclosed fines to induce non-compliance, then charged penalty fees. They asserted claims under the Fair Debt Collection Practices Act ("FDCPA"), the Texas Debt Collection Act ("TDCA"), and the Texas Decceptive Trade Practices Act ("DTPA"). Metropolis moved to dismiss all claims.

Plaintiffs alleged Metropolis used inconspicuous signs and undisclosed fines to induce non-compliance, then charged penalty fees.

HOLDING: Granted.

REASONING: In support of their claims, Plaintiffs argued the amount of the fine charged by Metropolis was undisclosed and unconscionable. Plaintiffs also alleged that Metropolis illegally threatened to tow or boot their vehicles and Metropolis illegally impersonated a government authority.

Metropolis argued generally against Plaintiffs claims and also argued that Plaintiffs failed to plausibly allege that Metropolis qualified as a debt collector under the FDCPA, which only regulates the actions of debt collectors and explicitly excludes any person collecting self-originating debts. The court agreed with Metropolis, finding that Plaintiffs failed to plead any credible facts to support their claim and that Plaintiffs' reliance on hypothetical or abstract facts did not satisfy the "plausibility" requirements of TDCA.

Additionally, the court rejected the Plaintiffs' claim that Metropolis illegally threatened to tow or boot their vehicles, reasoning that Texas law allows Metropolis to do so if drivers refuse to pay their parking fees. Similarly, the court did not accept Plaintiff's premise that Metropolis impersonated a government authority since the parking signs specifically stated the garage was operated by a private party.

Finally, the court held Plaintiffs failed to plead reliance or unconscionability under the DTPA, nor could the court infer it from the presented facts. While Plaintiffs alleged that Metropolis's actions violated the DTPA, they failed to plead reliance on those alleged violations which caused their injuries. In order to bring a claim under the DTPA, Plaintiffs must have relied on a deceptive business practice which led to their injury.

A CLAIM UNDER THE DTPA INCLUDES ITS OWN SET OF ELEMENTS—WHICH ARE INDEPENDENT OF THE ELEMENTS REQUIRED FOR A BREACH-OF-CONTRACT ACTION.

DTPA CAUSE OF ACTION MAY BE MAINTAINED WHEN DECEPTIVE ACT IS "PRODUCING CAUSE" OF ECONOMIC OR MENTAL ANGUISH DAMAGES.

Mock v. St. David's Healthcare P'ship, 2025 Tex. App. LEXIS 8614 (Tex. App.—Austin 2025).
https://law.justia.com/cases/texas/third-court-of-appeals/2025/03-22-00708-cv.html

FACTS: Plaintiff Melanie Mock ("Mock") sought medical treatment from Defendant St. David's Healthcare Partnership, LP (the "Hospital"). After Mock received treatment, the Hospital provided a form (the "Contract"), outlining potential outpatient services and procedures. A month later, Mock received a bill from the Hospital that included an Evaluation and Management Services Charge (the "Charge").

Mock filed suit, alleging the Hospital did not disclose the Charge before she consented to treatment, violating the Deceptive Trade Practices Act ("DTPA") and breaching the Contract. The Hospital moved for summary judgment and the trial court granted the motion, dismissing all of Mock's claims. Mock appealed.

HOLDING: Reversed.

REASONING: The Hospital argued Mock's DTPA claim could not survive because the trial court granted summary judgment on her breach of contract claim, and both claims arose from the same conduct. The court rejected this argument, reasoning that no controlling precedent requires a breach of contract finding before bringing a DTPA claim for failure to disclose. To qualify for summary judgment in Texas, the movant must prove no material fact issue exists as to one or more essential elements of the plaintiff's claim. Here, while the two causes of action arose from the same conduct, the DTPA claim included its own set of elements that were independent of the elements required for the breach of contract action. The DTPA claim required the plaintiff to prove that a deceptive act was the "producing cause" of damages. The Hospital's motion did not address this required element or demonstrate why Mock could not meet her burden to prove it.

The court concluded that the Hospital failed to meet its burden to show the absence of a genuine issue of material fact on Mock's DTPA claims and was not entitled to judgment as a matter of law.

DEBT COLLECTION

FDCPA EXPRESSLY EXCLUDES FROM "DEBT COLLECTOR" DEFINITION THOSE COLLECTING DEBTS THEY ORIGINATED

Frankfort v. Metropolis Techs., Inc., 2025 LX 327242 (N.D. Tex. 2025).
https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2024cv02283/394263/29/

FACTS: Plaintiffs Todd Frankfort, *et al.*, alleged that Defendant, Metropolis Technologies, Inc., violated the Fair Debt Collection Practices Act ("FDCPA"), among other things. Plaintiffs argued that a fact issue existed as to whether Defendant regularly collected debts owed or due to others but did not dispute that the alleged debt sought to be collected by Defendant originated with Defendant.
HOLDING: Dismissed.
REASONING: Defendant argued the FDCPA claim should be dismissed because the Defendant did not qualify as a "debt collector" under the statute. The court accepted the argument, explaining that "debt collector" under 15 U.S.C. §1692a(6) does not include those who collect or attempt to collect debts they themselves originated.

Because Plaintiffs did not dispute the alleged debt sought to be collected also originated with Defendant, Plaintiffs' FDCPA claim failed as a matter of law. The court dismissed with prejudice because the court determined that any attempt at amending the petition would be futile and delay resolution of the matter.

DEBT OWNERS COLLECTING FOR THEMSELVES ARE NOT "DEBT COLLECTORS" UNDER THE FDCP

Shaw v. Cornerstone Home Lending, Inc., 2025 U.S. Dist. LEXIS 189995 (S.D. Tex. 2025).
https://docs.justia.com/cases/federal/district-courts/texas/txsdce/4:2025cv03174/2017534/12

FACTS: Pro se Plaintiff Eros Shaw ("Shaw") filed suit against Cornerstone Home Lending, Inc., Federal Home Loan Mortgage Corporation, and Mortgage Electronic Registration Systems, Inc. (collectively, "Defendants"), alleging that Defendants sought to wrongfully foreclose upon his home in Huntsville, Texas. Shaw argued the foreclosure process lacked proper notification which made the entire sale process invalid. Additionally, Shaw presented claims including violations of the Fair Debt Collection Practices Act ("FDCPA"). Shaw requested five million dollars in compensation for "fraud, economic losses, credit impairment, and emotional distress."

Under the FDCPA, an entity must attempt to collect debts owed to another in order to qualify as a debt collector.

Defendants filed a motion to dismiss, asserting Shaw failed to state a claim upon which relief could be granted.
HOLDING: Granted.
REASONING: Shaw claimed that Defendants violated the FDCPA by misrepresenting the legal status of his debt, using unfair means to collect it, and failing to validate the debt upon request.

The court dismissed Shaw's arguments and held Defendants did not qualify as "debt collectors." Under the FDCPA, an entity must attempt to collect debts owed to another in order to qualify as a debt collector. The court established that Defendants qualified as debt holders, not debt collectors, because they owned the note and deed of trust and collected debts for their own benefit. As debt holders, their actions remained outside FDCPA jurisdiction. The court dismissed Shaw's FDCPA claim for failure to state a claim.

A "DEBT COLLECTOR" UNDER THE FDCPA DOES NOT INCLUDE A CONSUMER'S CREDITORS

Poullard v. Guillory, 2025 U.S. Dist. LEXIS 208498 (W.D. La. 2025).
https://law.justia.com/cases/federal/district-courts/louisiana/lawdce/6:2025cv00744/211489/25/

FACTS: Plaintiff John Poullard ("Poullard") obtained a loan approved by Defendant Anya Guillory ("Guillory"), the manager of American Cash Advance ("ACA"). After Guillory sent a letter seeking to collect, Poullard claimed the loan contract was illegal and unenforceable because it allowed the garnishing of his Supplemental Security Income ("SSI") benefits.

The original complaint attempted to assert a claim under the Fair Debt Collection Practices Act ("FDCPA") but was dismissed for failure to do so. Poullard filed a Motion to Vacate the trial court's order to dismiss.
HOLDING: Denied.
REASONING: Under the FDCPA, a "debt collector" does not include (1) any officer or employee of a creditor who collected debts for that creditor, or (2) any person who collected or attempted to collect a debt originated by that person themself. ACA and its employees were creditors to Poullard and originators of the debt they sought to collect. Therefore, they were excluded from the FDCPA's definition of debt collectors. Because Guillory and ACA did not satisfy the definition of debt collectors required by the FDCPA, the court found that Poullard failed to state a claim and that it would have been futile to grant the motions.

WHEN EVALUATING WHETHER A DEBT COLLECTOR'S REPRESENTATION VIOLATES FDCPA §1692E, A COURT MUST VIEW THE COMMUNICATION FROM THE PERSPECTIVE OF AN "UNSOPHISTICATED OR LEAST SOPHISTICATED CONSUMER."

IF THE CONSUMER ONLY DISPUTES THE DEBT ORALLY, "THE DEBT COLLECTOR IS UNDER NO OBLIGATION TO CEASE ALL COLLECTION EFFORTS AND OBTAIN VERIFICATION OF THE DEBT."

§1692F(1) OF THE FDCPA DOES NOT PROTECT AGAINST COLLECTORS COLLECTING A DEBT THAT RESULTED FROM IDENTITY THEFT.

COURT FINDS PLEADINGS SUFFICIENT UNDER THE TDCA FOR THE SAME REASONS HIS ALLEGATIONS ARE SUFFICIENT UNDER THE FDCPA.

Phap Anh Le v. Midland Credit Mgmt., Inc., 2025 U.S. Dist. LEXIS 221299 (W.D. Tex. 2025).

FACTS: Plaintiff Phap Anh Le ("Le") brought suit against Defendants Midland Credit Management, Inc. ("MCM") and parent company Encore Capital Group, Inc. ("Encore"), for illegal debt collection methods regarding his personal line of credit at The Bank of Missouri.

The court rejected Le's argument that MCM was required to cease collection after he disputed the debt because he only made the dispute orally and an oral dispute did not trigger the verification requirements.

Le asserted debt from his personal account was incurred through identity theft. Le contested the debt with MCM and claimed the company threatened to garnish his wages and file liens against him unless he made immediate payments. He also claimed that MCM failed to send a written validation notice, which led to inaccurate information to consumer reporting agencies.

Le asserted 13 federal and state claims in total, including violations of the Fair Debt Collection Practices Act (FDCPA), Texas Debt Collection Act (TDCA), and Texas Deceptive Trade Practices Act (TDTPA). MCM filed a motion to dismiss for failure to state a claim on which relief can be granted.

HOLDING: Granted in part and denied in part.

REASONING: Le argued MCM violated the FDCPA both by making deceptive threats during a collection call and by failing to provide required written validation of the debt after their initial communication.

The court applied the "least sophisticated consumer" standard and reasoned that an unsophisticated consumer could have interpreted MCM's statements in the call about possible garnishment and judgment enforcement as threats of legal action Therefore, MCM violated the FDCPA

However, the court rejected Le's argument that MCM was required to cease collection after he disputed the debt because he only made the dispute orally and an oral dispute did not trigger the verification requirements. Le then argued that MCM used unfair means by attempting to collect a debt he claimed resulted from identity theft. The court dismissed this argument because the FDCPA did not extend to identity theft cases.

Finally, Le argued the same conduct that violated the FDCPA violated the TDCA. The court established that the TDCPA provisions matched the FDCPA provisions and therefore agreed that Le's surviving claims and allegations were sufficient at both a federal and state level.

PLAINTIFF FAILED TO ALLEGE THAT THE DEFENDANT WAS A "DEBT COLLECTOR" FOR THE PURPOSES OF FDCPA LIABILITY

Hill v. Collections, 2025 U.S. Dist. LEXIS 217680 (M.D. Pa. 2025).
https://www.casemine.com/judgement/us/690d81fc2dff88ad93adef4a

FACTS: Plaintiff Jeffrey Hill ("Hill") was treated by a urologist and received several surgeries at UPMC Williamsport Hospital ("UPMC") from the years 2020 to 2021. After these surgeries, Hill received bills from UPMC, Susquehanna Physician Services, and Susquehanna Imaging Associates for medical services provided to him during his stays.

Based on earlier conversations with the Centers for Medicare and Medicaid Services, Hill believed that he owed nothing for his treatment and disputed the bills with all three providers. The parties referred Hill's bill to a debt collection agency who attempted to get in touch with Hill to settle the balances. After several unsuccessful attempts, Hill's bill from UPMC was referred back to UPMC where UPMC again attempted to collect the balance due.

Hill filed suit, claiming violations of the Fair Debt Collection Practices Act ("FDCPA"). UPMC moved to dismiss, arguing that Hill failed to allege facts showing UPMC was a "debt collector" under the FDCPA. A magistrate judge granted the motion and issued a report and recommendation that Hill's claims be dismissed. Hill then filed objections to the report and recommendation.

HOLDING: Affirmed.

REASONING: UPMC argued that it was not a "debt collector" under the FDCPA. The court accepted UPMC's argument. In doing so, the court reasoned that under the statute, a "debt collector" is someone other than the original creditor, who regularly collects unpaid debts. The court further explained that the definition of "debt collector" also included creditors who used an alias to create the illusion of a third party while they are attempting to collect their own debts.

Under the statute, a "debt collector" is someone other than the original creditor, who regularly collects unpaid debts.

The court found that UPMC did not fall under either

definition provided by the statute. UPMC was the original creditor because it originally billed Hill for the hospital stay and services rendered. Additionally, UPMC had not attempted to collect the amount due under any other name besides UPMC. Accordingly, the court held that Hill failed to establish that UPMC was a "debt collector" under the FDCPA and dismissed the claim.

FDCPA PROVIDES THAT IN THE CASE OF A SUCCESSFUL ACTION TO ENFORCE LIABILITY, THE DEBT COLLECTOR SHALL BE LIABLE TO THE DEBTOR FOR THE COSTS OF THE ACTION, TOGETHER WITH A REASONABLE ATTORNEY'S FEE AS DETERMINED BY THE COURT.

THE FACT THAT A PARTY PREVAILS "THROUGH A SETTLEMENT RATHER THAN THROUGH LITIGATION DOES NOT WEAKEN HER CLAIM TO FEES.

THE AGREEMENT IN THE INSTANT CASE, HOWEVER, DOES NOT REQUIRE THE COURT TO INTERPRET, APPROVE, OR OVERSEE THE AGREEMENT ITSELF NOR DOES IT AFFORD THE COURT JURISDICTION OVER ANY DISAGREEMENT OVER THE PERFORMANCE OR INTERPRETATION OF THE AGREEMENT.

THEREFORE, THE COURT CANNOT CONCLUDE THAT PLAINTIFFS HAVE OBTAINED JUDICIALLY SANCTIONED RELIEF SO AS TO SATISFY THE REQUIREMENT OF A SUCCESSFUL ACTION TO ENFORCE LIABILITY UNDER THE FDCPA.

Creacy v. Debt Mgmt. Partners, LLC, 2025 U.S. Dist. LEXIS 221689 (W.D.N.Y. 2025).

FACTS: Plaintiffs, Christine Creacy and Sandra Wiig ("Plaintiffs"), defaulted on consumer loans that defendant Debt Management Partners, LLC ("DMP") allegedly purchased and transferred to defendants Elite Debt Brokers, LLC ("Elite"), Capital Management Holdings, LLC ("CMH"), Dressler & Associates, LLC ("Dressler"), and an unidentified entity. Plaintiffs stated that Elite, CMH, Dressler, and the unidentified entity made continuous debt collection attempts while DMP maintained control over their debt collection methods. Plaintiffs alleged that they received continuous harassing phone calls after they requested that the calls stop.

Plaintiffs argued that they were entitled to attorneys' fees because the FDCPA mandates fee awards in "successful" actions, and a settlement should qualify as a "successful" result.

Plaintiffs filed a lawsuit against all Defendants for violating the Fair Debt Collection Practices Act ("FDCPA"). The parties reached an agreement through mediation. The agreement included debt forgiveness and financial compensation for Plaintiffs but reserved the right to determine attorney fees through court proceedings. Plaintiffs filed a motion to request legal fees, and the defendants moved for sanctions.

HOLDING: Denied.

REASONING: Plaintiffs argued that they were entitled to attorneys' fees because the FDCPA mandates fee awards in "successful" actions, and a settlement should qualify as a "successful" result. The defendants argued Plaintiffs were not entitled to fees because the case was resolved by a private settlement and voluntary dismissal. The court agreed with the defendants. In doing so, the court acknowledged that a settlement can, in some circumstances, support fee recovery under the FDCPA. However, in this instance, Plaintiffs had not brought a successful action to enforce liability because the settlement was purely private and not judicially approved nor incorporated into any order. As such, the settlement did not provide the judicially sanctioned relief required for fee recovery under the FDCPA.

INSURANCE

THE EXISTENCE OF A BONA FIDE COVERAGE DISPUTE PRECLUDES BAD FAITH CLAIMS UNDER TEXAS LAW

Cmty. of Hope Methodist Church v. Church Mut. Ins. Co., 2025 U.S. Dist. LEXIS 105827 (N.D. Tex. 2025).
https://law.justia.com/cases/federal/district-courts/texas/txndce/4:2024cv00656/392039/33/

FACTS: The Community of Hope Methodist Church ("Plaintiff") and its insurer, the Church Mutual Insurance Company ("Defendant") were in an insurance coverage dispute over damage sustained to the Plaintiff's building ("Property") because of a hailstorm (the "Loss Event"). The Plaintiff submitted a claim for coverage of damages under a commercial property policy (the "Policy") issued by Defendant. Defendant hired an independent adjuster to inspect the Property and a forensic engineer to assess the roof for hail damage. Defendant's independent adjuster determined that Plaintiff was only entitled to receive an elastomeric coating repair and that other damage was a result of a prior hailstorm. Plaintiff disagreed and claimed that it was entitled to a full roof replacement.

Under Texas law, insurers have a duty to deal fairly and in good faith with insurers.

Plaintiff sued, alleging breach of the common-law duty of good faith and fair dealing, among other claims. Defendant moved for summary judgment on the Plaintiff's bad faith claim.
HOLDING: Granted.
REASONING: Defendant argued that the summary judgment evidence demonstrated the existence of a bona fide coverage dispute regarding whether the hailstorm caused sufficient damage to require a full roof replacement. By contrast, Plaintiff maintained that Defendant failed to conduct a reasonable investigation or fairly adjust the claim, contending these failures gave rise to bad faith. However, Plaintiff did not introduce any additional qualified opinion or other competent evidence to challenge Defendant's expert findings on causation or the extent of damage.

Under Texas law, insurers have a duty to deal fairly and in good faith with insurers. However, evidence of a bona fide coverage dispute is not enough to establish bad faith if the insurer had a reasonable basis to deny or delay payment of a claim. The court concluded that, given Defendant's reliance on undisputed engineering reports and the lack of contrary evidence from Plaintiff, a genuine dispute existed about the scope of covered damage. As a result, the court held that Plaintiff failed to raise a genuine issue of material fact on its common-law bad faith claim.

ARBRITRATION

DEFENDANT WAIVED ANY RIGHT TO ENFORCE ITS CONTRACTUAL RIGHT TO ARBITRATION WITH ITS TWO-PLUS YEARS OF LITIGATION

Jonna v. GIBF GP, Inc., No. 24-1537, 2025 U.S. App. LEXIS 11966 (6th Cir. 2025).
https://law.justia.com/cases/federal/appellate-courts/ca6/24-1537/24-1537-2025-05-14.html

FACTS: Plaintiffs Raymond Jonna, Simon Jonna, and Farid Jamardov (collectively, "Plaintiffs") invested over $500,000 in Defendant Bitcoin Latinum's ("Latnium") cryptocurrency "Token" at the recommendation of Defendant Kevin Jonna. Plaintiffs wired their money to Latinum and to a third party, Jason Otto. Plaintiffs never received their Tokens and, suspecting fraud, filed a lawsuit against Kevin Jonna and Latinum.

Under Sixth Circuit precedent, this conduct constituted waiver of a contractual right to arbitrate, as it prejudiced the opposing party and is inconsistent with the intent to rely on arbitration.

Latinum moved to compel arbitration based on its Simple Agreement for Future Tokens (SAFT), which included an arbitration provision. Plaintiffs never signed the SAFT, but Latinum argued they were bound because Kevin Jonna executed it and Plaintiffs funneled money through him. The district court denied the motion, concluding that the Plaintiffs never assented to the SAFT and that Latinum waived its right to enforce arbitration. Latinum appealed.

HOLDING: Affirmed.

REASONING: The court affirmed the district court's denial of Latinum's motion to compel arbitration, holding there was no evidence indicating that Plaintiffs knew the SAFT existed or agreed to its terms, demonstrating a lack of assent. Even if there had been assent, the court held that Latinum waived any right to enforce arbitration through its two-plus years of litigation. Latinum filed dispositive motions, participated in extensive discovery, and took an appeal regarding a disqualification order. Under Sixth Circuit precedent, this conduct constituted waiver of a contractual right to arbitrate, as it prejudiced the opposing party and is inconsistent with the intent to rely on arbitration.

MISCELLANEOUS

THE TEXAS RESIDENTIAL CONSTRUCTION LIABILITY ACT ("TRCLA") DOES NOT CREATE A CAUSE OF ACTION OR DERIVATIVE LIABILITY OR EXTEND A LIMITATIONS PERIOD

THE TRCLA PROVIDES FOR ABATEMENT OF A LAWSUIT WHEN THE CLAIMANT FAILS TO PROVIDE PRESUIT NOTICE

THE TRCLA DOES PROVIDE DEFENSES AND LIMITS TO RECOVERABLE DAMAGES

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ACKNOWLEDGE THAT, PURSUANT TO THE TRCLA, THE REAL PARTIES' LAWSUIT WAS AUTOMATICALLY ABATED WHEN THE RELATORS FILED THEIR VERIFIED MOTION TO ABATE AND THE REAL PARTIES FAILED TO FILE A CONTROVERTING AFFIDAVIT

In re Barraza, 2025 Tex. App. LEXIS 7664 (Tex. App.–Corpus Christi 2025).
https://law.justia.com/cases/texas/thirteenth-court-of-appeals/2025/13-25-00440-cv.html

FACTS: David Flores and Terry Alaniz ("real parties") hired David and Yvonne Barraza ("relators") for construction of a residential home. Real parties then sued realtors for breach of contract, common law fraud, fraud in a real estate transaction, and deceptive trade practices. Real parties alleged that realtors failed to complete the construction, collected payment for their work in excess of that work, and failed to pay subcontractors and material providers. Relators filed a verified motion to abate the case, claiming that the real parties did not provide pre-suit notice of their claims under the Texas Residential Construction Liability Act ("TRCLA").

The TRCLA provides that a claimant must give written notice to a contractor before filing suit.

The trial court denied the motion. The relators petitioned for a writ of mandamus, asserting the trial court abused its discretion.

HOLDING: Granted.

REASONING: Relators argued the trial court abused its discretion by denying their verified motion to abate because the real parties did not provide pre-suit notice of their claims as required by the TRCLA.

The court agreed, reasoning that the TRCLA applied to (1) any action to recover damages or other relief arising from a construction defect and (2) any subsequent purchaser of a residence who files a claim against a contractor. The TRCLA provides that a claimant must give written notice to a contractor before filing suit. After receiving notice, the contractor must be given an opportunity to inspect the property and may make a written offer of settlement to the claimant. If the claimant considers the offer unreasonable, the claimant must advise the contractor in writing and explain why the offer is unreasonable. The TRCLA provided the abatement of a lawsuit when the claimant failed to provide pre-suit notice.

The court found that relators filed a verified motion to abate, and real parties failed to file a controverting affidavit. Therefore, the abatement was automatic pursuant to the language of the statute, and the trial court abused its discretion by concluding otherwise.

Wishing You a Very Happy New Year!
. . . And this issue of the Journal is a great way to start 2026.

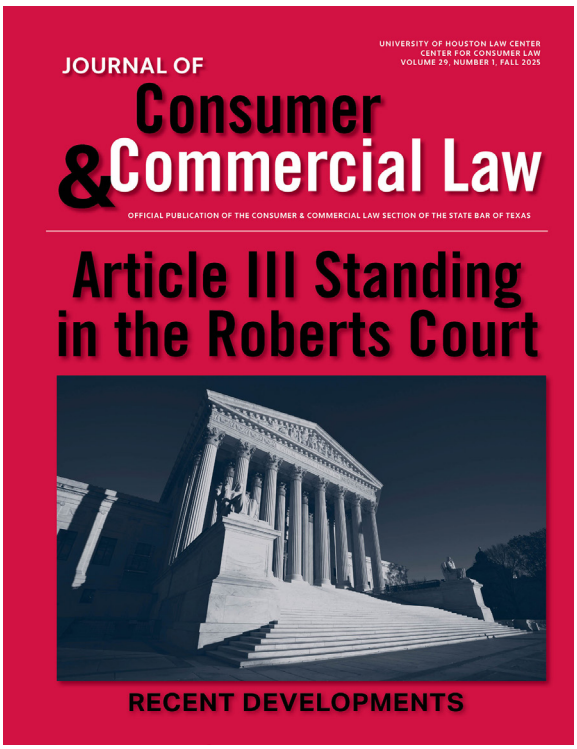
As usual for the first issue of the year, it contains the "*Insurance Law Update."* Suzette E. Selden and Henry Moore do a great job discussing all the significant recent insurance law cases. Among the many decisions discussed are a Texas Supreme Court opinion clarifying the limits of taking a corporate representative's deposition, and affirming that bifurcation is an alternative to severance in underinsured motorist cases. As well as a Fifth Circuit decision that an insurance policy's definition of "suit" includes alternative dispute resolution proceedings, triggering the insurance company's duty to defend. Finally, 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

Of course, it would not be the *Journal* if we didn't discuss more than 20 recent consumer law decisions, all of interest to consumer and commercial lawyers. We have also added a new *Legislative Update* section.

Finally, remember, the *Journal* is now available only in digital format. Members of the Consumer Law Section receive a link by email, and all issues of the *Journal* are available at http://www.jtexconsumerlaw.com/.

Wishing you a happy and healthy 2026.

Richard M. Alderman
Editor-in-Chief



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