

TX Supreme Court: Full Appraisal and Interest Payment Bars Insured's Recovery of Attorney's Fees

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The Texas Supreme Court confirmed prior holdings from the Texas Courts of Appeals in Dallas and Fort Worth on Feb. 2, holding that, in claims governed by Tex. Ins. Code 542A (the “Hail Bill”), an insurer’s tender of the full amount of an appraisal award, along with possible interest that could be due under the Prompt Payment of Claims Act, would foreclose an insured from obtaining attorney’s fees against the insurer.

The New Texas Supreme Court Ruling: *Mario Rodriguez v. Safeco Insurance Company of Indiana*

As background, the insurance claim in this case involved a 2019 tornado loss, which resulted in a net payment of \$27,449.88 to the insured. The insured retained counsel, who argued to the insurer that an additional \$29,500 was due on the claim.

The insured filed suit in June 2020, alleging violations of the Texas Insurance Code and breach of contract. The parties undisputedly agreed that the matter was governed by Chapter 542A of the Texas Insurance Code, and the matter was removed to federal court. The insurer then invoked appraisal, and the appraisal panel issued an award in April 2022 for \$36,514.52.

One week later, the insurer tendered \$32,447.73 to the insured, along with another \$9,458.40 to cover any possible interest that could be due on the appraisal award. The insured did not dispute that the payment was timely or fully paid. The insurer then moved for summary judgment on the grounds that its payment of the full appraisal award and statutory interest extinguished any recovery of attorney’s fees by the insured. The trial court agreed and dismissed the case.

On appeal, the Fifth Circuit acknowledged the split in the federal courts regarding the effect of Chapter 542A on attorney’s fees in these circumstances. Some federal courts consistently granted summary judgment to insurers, finding that the payment of an appraisal award would extinguish attorney’s fees, while others would deny summary judgment, finding that the payment of an appraisal award did not necessarily defeat a claim for attorney’s fees.

Accordingly, the Fifth Circuit **certified a question** to the Texas Supreme Court as follows: “In an action under Chapter 542A of the Texas Prompt Payment of Claims Act, does an insurer’s payment of the full appraisal award plus any possible statutory interest preclude recovery of attorney’s fees?” The Texas Supreme Court answered “yes.”

The Court noted that the statutory provisions of Section 542A.007 operate to limit an insured’s recovery of attorney’s fees, and that the provision itself was not unclear or ambiguous. The Court outlined that key to this determination was the provision which required the calculation of a fraction (or percentage) under Section 542A.007(a)(3)(A) that operated to reduce an insured’s attorney’s fee claim. This fraction is calculated by taking the amount awarded in

judgment under the insurance policy and dividing it by another amount provided for in Section 542A.007, usually the amount provided for in the pre-suit notice letter. This fraction is then multiplied by the reasonable and necessary attorney's fees, reducing the total attorney's fees that can be recovered by the insured.

Because the insurer had paid **all amounts owed** under the policy at issue and statutory interest, there was no "amount to be awarded in the judgment to the claimant for the claimant's claim under the insurance policy." Because the numerator of the fraction is zero, the initial calculated fraction is zero. From there, any number multiplied by **this initial calculation** "can never yield a non-zero amount of attorney's fees. As a result, in this case and others like it, there will never be a non-zero amount of permissible attorney's fees under the formula described in section 542A.007(a)(3)." The Court went further and noted that Section 542A.007(c) supported such an outcome, as it indicates that a court may not award attorney's fees if the initial fraction calculated in Section 542A.007(a)(3)(A) is less than 0.2, which would apply even if there was another way to calculate attorney's fees on the matter.

The Court outlined that though one could argue that payment of the appraisal award and interest may not necessarily foreclose on a non-zero judgment under the insurance policy, their prior decision in *Ortiz* prevented such an outcome, as the *Ortiz* Court found that the payment of an appraisal award extinguishes liability on a breach-of-contract claim and satisfies the insurer's obligations under the policy. In the present case, because the insurer discharged its liability by paying the appraisal award and possible statutory interest, there was no further amount the insured could obtain in judgment under the insurance policy. As the recovery of attorney's fees depends on obtaining a judgment under the insurance policy, the Court reasoned that the insured could not obtain attorney's fees on the matter even if there was a possibility of obtaining a judgment on claims unrelated to the recovery of amounts under the insurance policy.

The Court last addressed the argument that its interpretation of the statute would result in abusive and unfair practices by insurers. The Court recognized that some federal courts had disagreed with arguments consistent with the Court's present ruling. The Court noted that these federal courts had held that the Texas Legislature did not intend to read attorney's fees completely out of the statute, only to limit their recovery. However, the Texas Supreme Court opined that instead of speculating on the intention of the Legislature, the courts should follow the statute as written, and the Legislature could change the law if necessary. The Court noted that the result of their decision was not "unthinkable or unfathomable," but instead returned these cases to the default American Rule, which requires parties to pay their own attorney's fees.

Changes to Post-Appraisal

With the Texas Supreme Court providing guidance on these issues, insurers now have the option to pay a full appraisal award with potential interest that could be calculated under Chapter 542 in an effort to mitigate potential damages. However, the advantages of this ruling are only available where the claim is governed by Chapter 542A of the Texas Insurance Code. Even then, other factors such as the amount of loss in dispute and the timing of the appraisal may affect the ultimate interest calculation. Moreover, various coverage issues may preclude any recovery under a policy, and an insurer will not have certainty in the extinguishment of a claim for attorney's fees if the appraisal award or potential Chapter 542 interest remains unpaid.

Nevertheless, this decision has now confirmed that if the claim is governed by Chapter 542A and an insurer pays both the full appraisal award and the potential interest under Chapter 542, the insured will be precluded from the recovery of attorney's fees based upon the formula provided in Section 542A.007.