ZELLE LLP

# LONESTAR LOWDOWN

Dedicated to Texas First-Party Property Claims

The Zelle Lonestar Lowdown | Wednesday, May 21, 2025 | ISSUE 25

Welcome to The Zelle Lonestar Lowdown, our monthly newsletter bringing you relevant and up-to-date news concerning Texas first-party property insurance law. This issue marks two years of the Lonestar Lowdown!

Our theme for 2025 is Collaboration. We recognize that we are not an island in this industry and our clients, and ultimately the property owners, best benefit when we collaborate to resolve disputes. In that vein, we invite you to submit an idea for an article that we can include this year in the Lowdown. Our editors will choose one article to include in each issue. Stay tuned for more information about our next quarterly event, collaborating with some of our partners in this industry to encourage networking and discussion on the issues in our field. Let's continue to make 2025 the best year yet for the property insurance industry in Texas!

If you are interested in more information on any of the topics below, please reach out to the author directly. As you all know, Zelle attorneys are always interested in talking about the issues arising in our industry. If there are any topics or issues you would like to see in the Lonestar Lowdown moving forward, please reach out to our editors: Shannon O'Malley, Todd Tippett, and Steve Badger.


## INSIDE THIS ISSUE



## Upcoming Events

You don't want to miss this!

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**May 21 –** Todd Tippett will present "Dealing with Public Adjusters, Contractors, and Storm Chasers in Challenging Situations" at the NAMIC Farm Mutual Forum in Minneapolis, MN.

**June 5 –** Bennett Moss will present "Ethics Jeopardy" with co-presenter James Preston (Liberty Mutual) at the 2025 Loss Executives Association (LEA) Spring Meeting and Educational Conference in Newport, RI.
**June 12** - Lindsey Davis will present "Structural Damage and Repair Requirements: Navigating Building Codes" at the CLM Focus Conference in Nashville, TN.

**June 16** – Steven Badger will present "Legal Issues in Appraisal - Global Perspective" at the Insurance Appraisal and Umpire Association, Inc. (IAUA) training and certification program in Las Vegas, NV.

**June 16 – 18** – Zelle LLP is proud to sponsor the RISE Leadership Summit and Awards Gala in Ft. Lauderdale, FL.

**June 23** – Steven Badger will present "Update From The Trenches -- Hot Topics In First-Party Claims" at the Texas Surplus Lines Association Mid-Year Meeting in Whistler, Canada.

**June 23 - 25 –** Brandt Johnson, Lindsey Davis, and Jessica Port will present at the PLRB Western Regional Adjusters Conference in Glendale, AZ.

**June 26** - As part of our 2025 DFW Insurance Industry Collaboration event series, Zelle LLP and J.S. Held invite you to Sip, Snack, Socialize, and play a round of Mini-Golf at Puttshack (5100 Belt Line Rd, Addison, TX 75254) from 5:00 pm - 7:00 pm. Click here or on the image below to RSVP.

**July 21** – Steven Badger will present at the P.L.A.N. Property Loss Appraiser & Umpire Certification Conference in Dallas, TX.

**August 26 –** Steven Badger will present "Fraud and Abuse in CAT Claims - What The Hail Is Going On and How Do We Stop It?" at the National Association of Mutual Insurance Companies (NAMIC) General Counsel Connect program in Chicago, IL.

**September 9 - 10 –** Jennifer Gibbs and Jessica Port are presenting at the PLRB Regional Innovation Summit from September 9-10, 2025

in Concord, NC.

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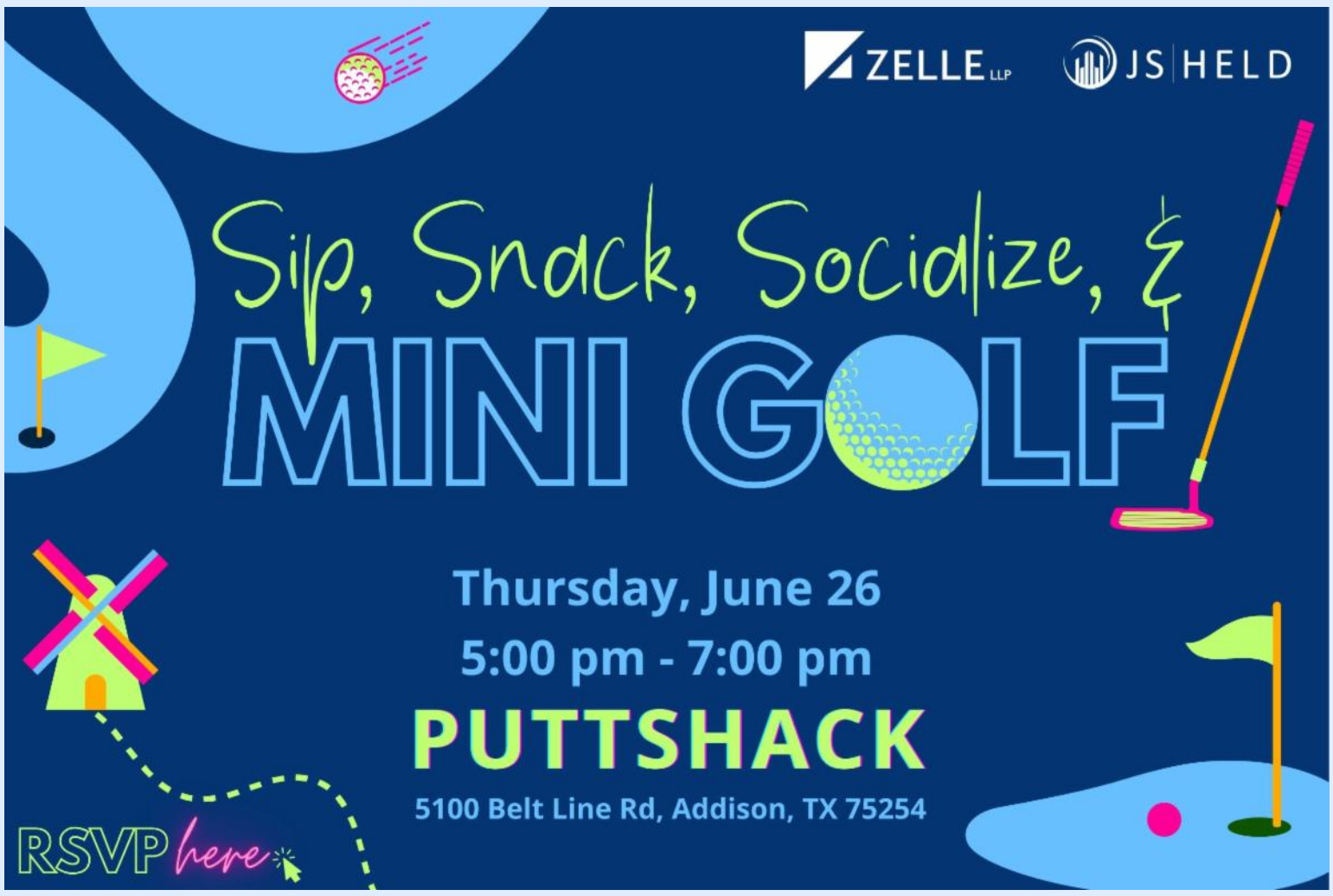


If you are interested in participating in a future quarterly collaboration event, please contact us.

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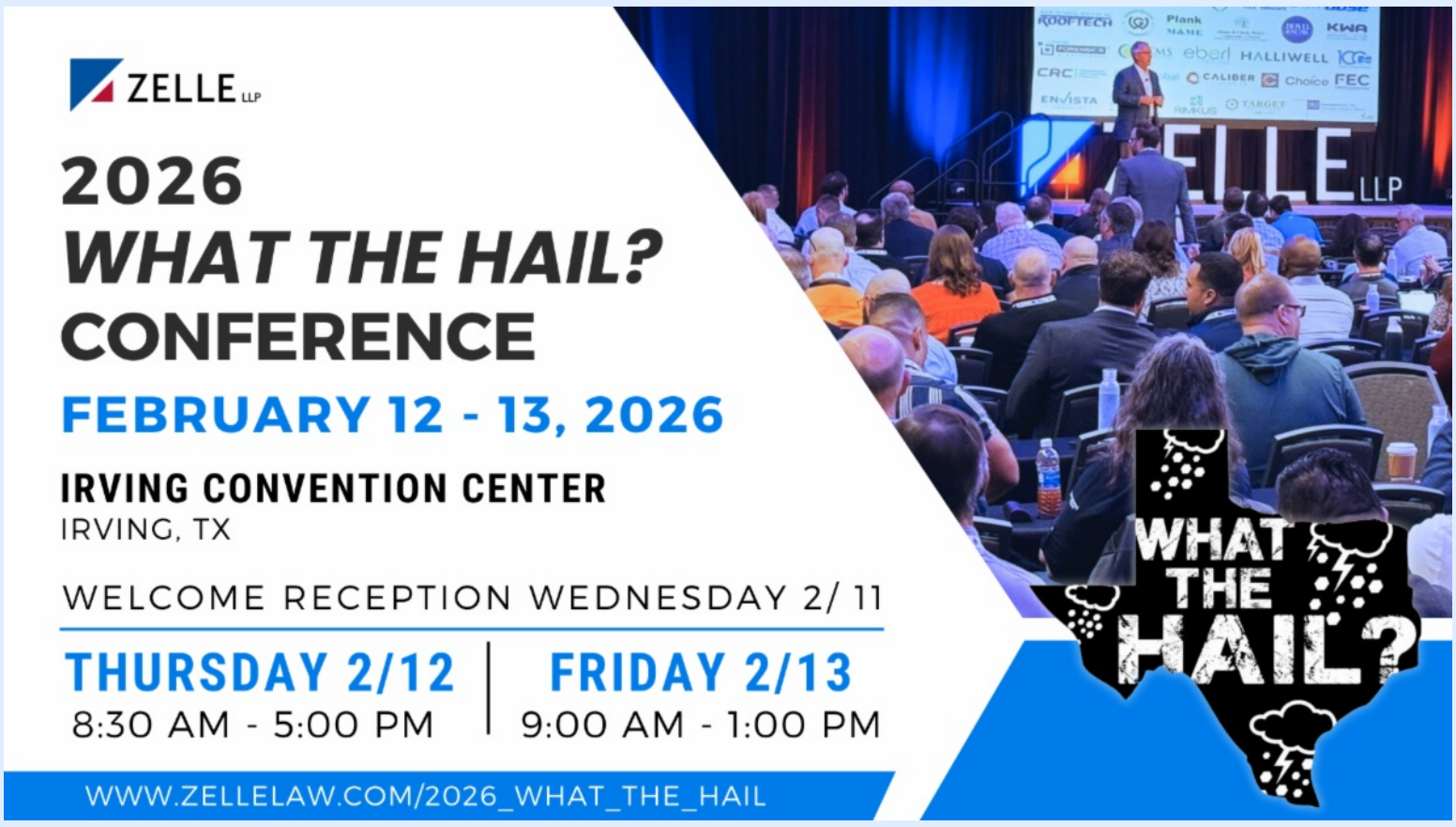


## Registration will open July 1, 2025!

Sponsorship opportunities available!

Contact Abannon@zellelaw.com for more information.

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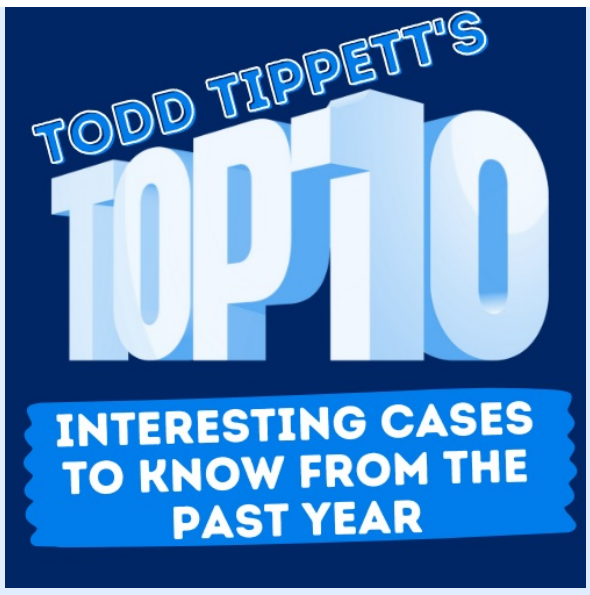


1. *Smiley Team II, Inc. v. General Star Insurance Co*., No. 23-40129, 2024 WL 2796652 (5th Cir. May 31, 2024) - Expert affidavits with nothing more than conclusory, subjective opinions do not create a fact

## News From the Trenches

by Steven Badger

Almost every day I see a social media post by a contractor or public adjuster complaining that insurance companies “don’t pay O&P”. They all want to complain about how they can't earn a living if they can't cover their overhead and their profit.

My response is always the same. No, insurance companies are not refusing to pay O&P. We pay trade contractor, subcontractor, and mitigation contractor overhead and profit on every claim. We pay it as part of every Xactimate estimate. That is because the overhead and profit of these contractors is included in the line items within the Xactimate estimate. But with that said, what we don’t always pay is “GCO&P”, which of course is general contractor overhead and profit. The two infamous line items at the very bottom of an Xactimate estimate.

Here is where so many contractors and public adjusters go astray. Whenever an insurance company refuses to pay GCO&P, the contractors and public adjusters get upset and post that we are refusing to pay “O&P”. No we aren’t. If we wrote an Xactimate estimate with line items for the work at issue, we are absolutely paying

issue sufficient to defeat summary judgment.

2. *Ansah v. Nationwide Property and Casualty Insurance Co.*, No. H-23-2488, 2024 WL 3929895, at *5 (S.D. Tex. Aug. 23, 2024) – An Insured's failure to comply with their Duties under its policy can be a complete bar to claims.

3. *Espinoza v. State Farm Lloyds*, 1:23-CV-751-DH (W.D. Tex. Sept. 16, 2024) – Concurrent Causation is alive and well - if an Insured fails to provide competent summary judgment evidence that would allow the trier of fact to segregate covered loss from non-covered losses, an insurer is entitled to summary judgment on the matter.

4. *Funes v. Allstate Vehicle and Property Insurance Company*, No. 4:24-CV-00808, 2024 WL 4294677 (S.D. Tex. Sept. 25, 2024) - Appraisal is not appropriate until the Insured cooperates in the adjustment of the claim.

5. *Lotus Sky LLC v. Lexington Ins. Co.*, No. 2:24-cv00085-Z-BR, 2024 WL 3906768, at *1 (N.D. Tex. Aug. 22, 2024, no pet.) - An Insureds' failure to send a proper Pre-suit Notice sets the stage to automatically abate a case and preclude attorneys' fees.

6. *Beka One, LLC v. RLI Insurance Co.*, No. 5:23-CV-000642024, WL 4839166, *1 (W.D. Tex. Sept. 13, 2024) – A simple disagreement between experts does not support a claim for bad faith.

7. *Rios v. Homesite Insurance Co.*, et al, No. 5:23-CV-00006, 2024 WL 4984446 (S.D. Tex. Sept. 26, 2024) – Re-affirming Texas law that an appraisal panel can consider causation when determining the amount of loss, and that an Insurer can rely on those considerations when filed for Summary Judgment.

8. *Iyengar v. Liberty Insurance Corp.*, No. SA-21-CV-1091-FB, 2024 WL 5505300 (W.D. Tex. Dec. 13, 2024) – Federal court upholds Cosmetic Damage limitation/exclusion when it contains specific language regarding the limitation.

9. *Devindra Investments v. Wesco Ins. Co.*, No. 2:24-CV-097-Z-BR, 2025 WL 553071 (N.D. Tex. Feb. 19, 2025) – Sending the required pre-suit notice under Section 542A.003(a) of the Texas Insurance Code to the independent adjuster does not comply with notice requirements as to the Insurer.

10. *Fif Engineering, LLC v. Pacific Employers Ins. Co.*, No. 24-665, 2025 WL 593384 (S.D. Tex. Feb. 24, 2025) – Boilerplate bad faith causes of action without specific factual allegations are subject to dismissal under the Federal Court's heightened pleadings standard.

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Feel free to contact **Todd M. Tippett** at 214-749-4261 or ttippett@zellelaw.com if you would like to discuss these Tips in more detail.

O&P. But what we are not necessarily paying is GCO&P, which is an entirely different issue and analysis.

Now, with that said, perhaps the complaining contractor or public adjuster doesn't think we are paying enough O&P. That can be a legitimately disputed issue. If the insurance company's estimate is simply "too low" to afford the contractor enough to cover its reasonable O&P, the insured is free to raise that issue and discuss it with the insurance company (and note that I said "insured is free to raise" rather than the contractor – so no one runs afoul of UPPA/UPL issues). And, of course, the insured can invoke appraisal to resolve the issue.

But again, that analysis is entirely different -- indeed, wholly unrelated -- to whether the insurance company owes GCO&P.

So when does an insurance company owe for GCO&P?

Here is the language from the slide I use whenever I speak about this issue. It is generally applicable in most states (and certainly is the law in Texas). Here is when GCO&P should be paid on a claim:

ACV Payment -- include in the estimate/initial claim measure when the involvement of a general contractor will be reasonably necessary (a subjective test; doesn't matter if GC actually retained)

RCV Payment -- include in the final claim measure when the involvement of a general contractor was reasonably necessary (again, a subjective test) *and* the cost for a general contractor was actually incurred (an objective test; was a GC retained and paid?)

That's it. It's not that hard. And, no, the TDI has never issued any type of bulletin or directive stating that insurance companies must pay GCO&P in every claim. That's not what the bulletin states.

I have now responded to this issue 1,473 times over the past 15 years, including in numerous LinkedIn posts, during conferences, in interviews, over a beer at a trade show, and even as recently as last week in Chip Merlin's Claims Game podcast (see link elsewhere in the Lowdown). It's not a hard concept. But I suspect it will keep coming up as contractors continue to whine about working on insurance claims.

Which begs the question: If you hate working on insurance claims because you think we "don't pay O&P", then why do you work on insurance claims?

Hmmmm…..

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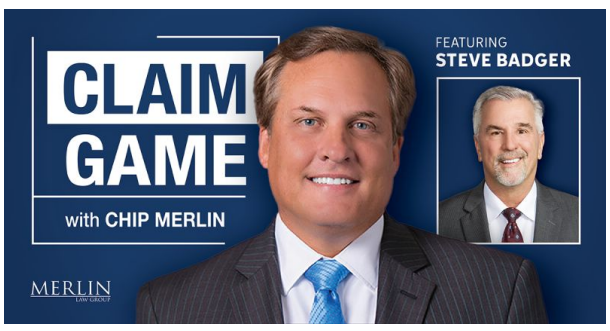
Steven Badger recently sat down with Chip Merlin as a guest for Merlin Law Group's Claim Game podcast, offering his unfiltered perspective on key issues facing the property insurance claims industry. The conversation was candid, occasionally confrontational, and ultimately insightful—delivering a balanced look at where the industry stands and where it's headed.




**View the recording here!**

# AI Update

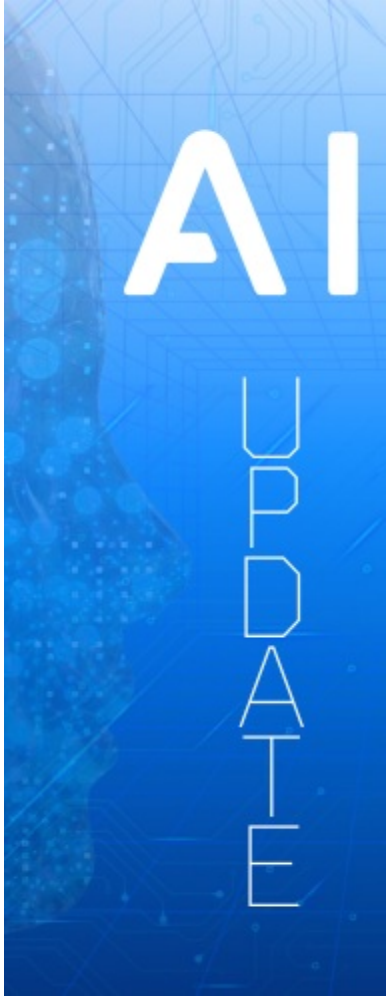
## Chatbot Errors? – There's a Policy for That!

by Jennifer Gibbs

In a remarkable development revealing the increasing integration of Artificial Intelligence into business operations, insurers at Lloyd's of London have launched focused coverage for losses caused by artificial intelligence tool failures -- particularly chatbots and customer service platforms. This latest product is designed to cover legal fees and damages incurred when AI tools significantly underperform, initiating lawsuits from both customers and third parties.

Several real-world scenarios demonstrate the necessity of such coverage. For example, Money's chatbot mistakenly reprimanded a customer for using the word "virgin," and DPD disabled its bot after inappropriate and offensive interactions with users. Additionally, Air Canada faced financial implications when a tribunal directed it to honor a chatbot-generated false discount. According to Armilla, its insurance policy would have absorbed such financial losses if the chatbot's performance was "demonstrably below initial benchmarks."

Armilla's new policy responds to an existing coverage gap in that general technology policies typically exclude claims arising from AI's adaptive learning processes, which inherently introduce unpredictability. Armilla's approach assesses an AI model's initial performance metrics and provides coverage if significant degradation occurs over time. For instance, a chatbot initially accurate in 95% of interactions dropping to 85% accuracy could trigger a claim.




Karthik Ramakrishnan, Armilla's CEO, emphasizes that this insurance may encourage broader adoption of artificial intelligence technologies by providing companies with greater confidence in managing and addressing the associated risks. The development of this product signals a fundamental shift for businesses and insurers alike, recognizing AI not only as a tool for innovation but also as a potential source of distinct operational risks requiring new and specialized insurance products.

## When Coverage Disagreements Are Justified: The Bona Fide Dispute Doctrine in Action

by Austin Taylor

In Texas, bad faith claims arising under the Texas Insurance Code or the common law are routinely asserted by plaintiffs in first-party insurance disputes. While these causes of action are frequently pled, mere disagreement between an insurer and a policyholder over coverage doesn't ordinarily give rise to bad faith. Texas courts have long recognized the bona fide dispute doctrine, which holds that "[e]vidence establishing only a bona fide coverage dispute does not demonstrate bad faith." *Weiser-Brown Operating Co. v. St. Paul Surplus Lines Ins.*, 801 F.3d 512, 526 (5th Cir. 2015) (cleaned up). Stated differently, "[a]s long as the insurer has a reasonable basis to deny or delay payment of a claim, even if that basis is eventually determined by the fact finder to be erroneous, the insurer is not liable for the tort of bad faith." *Higginbotham v. State Farm Mut. Auto. Ins*, 103 F.3d 456, 459 (5th Cir. 1997) (citation omitted). U.S. District Court Judge Reed O'Connor recently granted summary judgment in favor of Central Mutual Insurance Company on an insured's bad faith claims, finding that only a bona fide dispute existed between the parties.

*Smith v. Central Mutual Insurance Company* arose out of an insurance coverage dispute between the insured, Robert Smith, and Central Mutual Insurance Company. No. 4:24-CV-00723-O, 2025 WL 1170320, at *1 (N.D. Tex. Apr. 22, 2025). On April 28, 2021, Mr. Smith's home sustained damage due to a hailstorm. *Id.* Mr. Smith submitted a claim for coverage, asserting that the entire roof needed replacement. However, Central Mutual—after conducting four inspections and consulting with two field adjusters, an engineer, and a building consultant—contended that only a limited number of roof tiles were damaged and required replacement. *Id.*

Mr. Smith ultimately filed suit alleging breach of contract as well as violations of the Texas Insurance Code Chapter 541, Texas Deceptive Trade Practice Act (statutory bad faith), and breach of the duty of good faith and fair dealing (common law bad faith). *Id.* Central Mutual moved for summary judgment, arguing that there was no evidence of bad faith or breach of contract, and that the dispute was merely a bona fide coverage disagreement. *Id.* at *2. More specifically, Central Mutual argued that it relied in good faith on two field adjusters, an engineer, and a building consultant—all of whom opined that damage to Mr. Smith's roof was limited. *Id.* In response, Mr. Smith contended that, instead of fairly adjusting his claim, Central Mutual conducted an "outcome-oriented" investigation, focusing on notes Central Mutual made to one of its adjusters. *Id.* These notes indicated that Central Mutual asked its consultants to prepare an estimate for only those portions of the roof they identified as being damaged. The Court observed that Mr. Smith failed to explain how Central Mutual asking its adjuster to estimate damages related to specific portions of the roof was outcome-oriented. The Court concluded that the evidence in the record showed only "a bona fide dispute over the portion of [Mr. Smith]'s roof that was damaged by hail during the Loss Event" *Id.* Judge O'Connor granted summary judgment on all of Mr. Smith's bad faith causes of action in favor of Central Mutual. *Id.* at *2-*3.

The *Smith* decision reaffirms the bona fide dispute doctrine as a defense against bad faith claims under Texas law. Particularly where an insurer can demonstrate a reasonable basis for its coverage decision—supported by expert opinions and thorough investigation. Absent evidence suggesting that it was unreasonable for an insurer to rely on the opinions of its experts (i.e. evidence that the expert's report was not objectively prepared or the insurer's reliance on the report was unreasonable), courts are unlikely to find an insurer acted in bad faith.

## Insurer Escapes Duty to Defend Obligation in Toll Road Pile-Up Lawsuits Under Designated Work Exclusion and Professional Liability Exclusion

by Alexander Masotto

On March 19, 2025, Judge Reed O'Connor in *Liberty Mutual Fire Insurance Co. v. N. Tarrant Infrastructure LLC*, No. 4:23-cv-01043-O, 2025 WL 863470 (N.D. Tex. Mar. 19, 2025) held that under the Eight-Corners Rule, Liberty Mutual owed no duty to defend pursuant to the policy's Designated Work Exclusion and Professional Liability Exclusion.

Liberty Mutual issued a policy in 2013 that only covered work related to a specific highway project: the rebuilding and expansion of Segment 3A of the North Tarrant Express. After the toll road opened in 2018, a deadly multi-vehicle pile-up occurred during a 2021 winter storm, prompting over 30 lawsuits. The lawsuits alleged that, among other things, North Tarrant Infrastructure LLC ("NTI"), Ferrovial Construction US Corp, and Webber LLC (collectively, the "Defendants") failed to maintain the roadway.

The key issue was whether Liberty Mutual owed a duty to defend or indemnify the Defendants in the underlying lawsuits. Liberty Mutual however declined coverage, asserting the claims fell outside the policy's scope, which excluded: (1) bodily injury arising out of work conducted for any project other than the North

## Spotlight

**Zelle LLP welcomes Andrew Hilgenkamp!**

Tarrant Express; and (2) bodily injury arising out of the rendering of or failure to render any professional services. Liberty Mutual then sought declaratory relief.

Applying the Texas Eight-Corners Rule, the Court held Liberty Mutual had no duty to defend. Liberty Mutual asserted that all of the allegations related to Defendants' "failure to maintain the roadway." While Defendants agreed, Defendants also argued that each underlying lawsuit made broad "defect" allegations without specifying whether the defects were construction or design defects. Thus, Defendants urged the court to infer that the defects concerned "construction defect" claims because NTI (as a defendant in the underlying lawsuits) constructed the roadway and the Court should "draw all reasonable inferences in favor of [Defendants]."

But the Court quickly dismissed this argument, and stated that "the *facts* giving rise to the alleged actionable conduct" did not support such an inference. Instead, the Court noted that the underlying factual allegations included Defendants' "acts and omissions" relating to the weather event and the accident. After carefully analyzing the underlying lawsuits, the Court found that the allegations "unequivocally concern Defendants' maintenance and operation of the roadway." Accordingly, any "work" relating to the operation and maintenance of the roadway, which occurred after the project's construction was completed and therefore fell outside the policy's scope. Furthermore, any failure to implement "state-of-the-art technology" suggesting a potential design defect would be excluded under the policy's Professional Liability Exclusion.

Lastly, the Court appropriately ruled that the duty to indemnify was not yet ripe for decision, as the underlying litigation was ongoing, and factual findings could later affect that determination.

In sum, while "allegations are read liberally in favor of the insured," this decision illustrates that Texas courts will reject attempts to recharacterize allegations to trigger the duty to defend under the Eight-Corners Rule.

Andrew will be joining Zelle's Dallas office as an Associate. We're excited to have him on board and look forward to the knowledge and insights he'll add to our team.

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Thank you to everyone who attended Zelle LLP's Webinar Week! We hope you found the sessions insightful and valuable.

If you have not already done so, we'd greatly appreciate it if you could take a few minutes to complete a brief survey about your experience during our presentations. Click here to provide feedback. Your comments will remain anonymous.

Reach out to Zelle LLP if your organization would benefit from a presentation or seminar from our attorneys.

**Contact Us!**

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## Court Analyzes "Forces of Nature" in Applying Section 542A of the Texas Insurance Code

by Isabella Arciba

Recently, the United States District Court for the Northern District of Texas, Dallas Division, rejected an insured's attempt to reframe its claim from a "forces of nature" claim and enforced Section 542A.006 of the Texas Insurance Code. Texas Insurance Code § 542A.006 allows an insurer to elect to accept responsibility for an agent's acts or omissions related to a weather-related insurance claim.[1]

In *Herrera v. AmGuard Ins. Co.*, the policyholders' property sustained damage allegedly arising from an alleged lightning strike and tree fall, resulting in an electrical event.[2] The policyholders attempted to sidestep the application of Section 542A.006 by arguing that it did not apply because their property was damaged by a voltage surge rather than "forces of nature," as required by § 542A.006.[3] The policyholders filed suit against AmGuard and its field adjuster, Jeremy Robert, alleging violations of the Texas Insurance Code, violations of the Deceptive Trade Practices Act, benefits loss rule, and independent injury and independent loss of benefits.

Before the policyholders filed suit, AmGuard elected to accept full responsibility for Robert's actions, as permitted by the Insurance Code.[4] AmGuard moved to dismiss all claims against Robert based on improper joinder and Section 542A. AmGuard argued that there was no possibility of recovery against Robert because AmGuard elected to accept responsibility for Robert's actions prior to the filing of the instant lawsuit.

Under Section 542A.006(b), when an insurer accepts an agent's liability before an action is filed, there is no possibility of recovery against the agent and the action against the agent *must* be dismissed with prejudice.[5] However, the policyholders argued that Section 542A.006 did not apply because their claim arose from an electrical event rather than by "forces of nature."[6] The policyholders argued their petition lacked allegations regarding damage caused by a force of nature and therefore the case did not involve a weather-related claim.

The court disagreed. The court held that Section 542A applied to the instant lawsuit because multiple insurance estimates from the policyholders actually designated *hail* as the cause of damage to the Property. Thus, the court concluded that at a minimum part of the claim arose from hail, satisfying the claim requirements of Section 542A.[7]

Based on the foregoing, this opinion reinforces Section 542A's goal to reduce an adjuster's liability and applies to *any* claims that may even partly arise from forces of nature.[8]

[1] Tex. Ins. Code § 542A.006.
[2] *Herrera v. AmGuard Ins. Co.* , No 3:24-CV-2679-B, 2025 WL 1083212 (N.D. Tex. Apr. 10, 2025).
[3] *Id.* at *2.
[4] *Id.*
[5] Tex. Ins. Code § 542A.006(b).
[6] *Herrera v. AmGuard Ins. Co.* , No 3:24-CV-2679-B, 2025 WL 1083212, *2 (N.D. Tex. Apr. 10, 2025).
[7] *Id.* at *3.
[8] Tex. Ins. Code § 542A.001(2).

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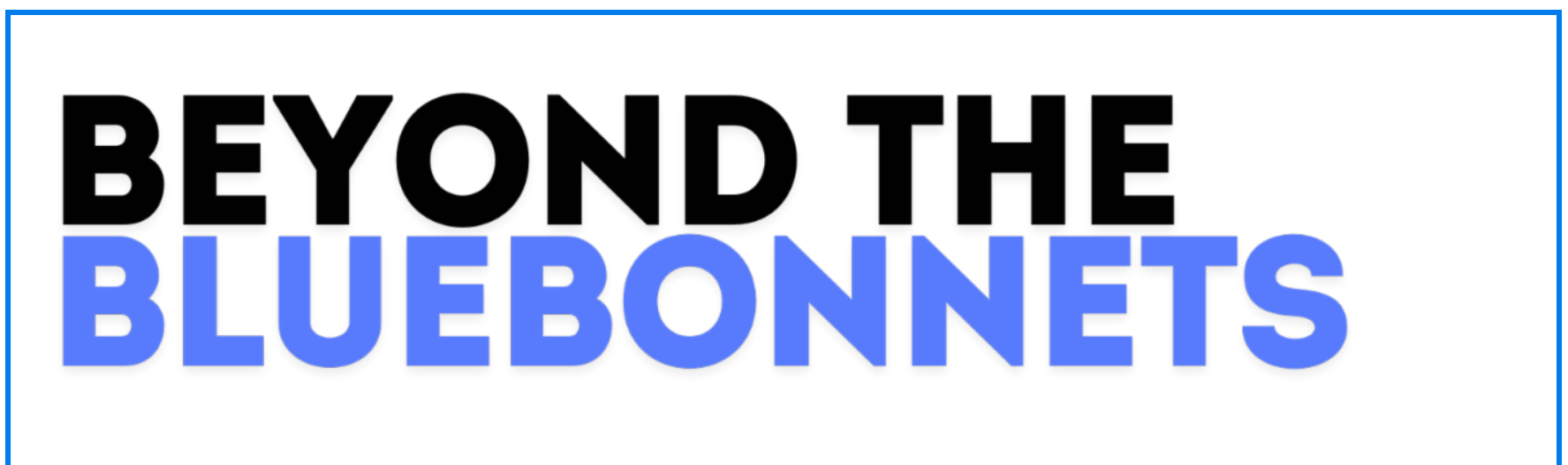

# Georgia's Latest Efforts at Tort Reform: SB 68 & SB 69 Reshape the Liability Landscape for Insurers and Policyholders Alike

by Jackson Griner (Atlanta Office)

In a legislative whirlwind that has left Georgia's legal landscape noticeably altered, Governor Brian Kemp recently signed into law two landmark tort reform bills—Senate Bill 68 ("SB 68") and Senate Bill 69 ("SB 69")—ushering in a new era in personal injury litigation. The purported goal of this legislation is to assist judges and juries in deciding appropriate damage awards for injured parties and to avoid what some believe is trickery by plaintiffs' attorneys in personal injury lawsuits.

While "Nuclear verdicts," where a single injured party receives a verdict in excess of $10 million, can occur nationwide, there is no denying that Atlanta's highways have become adorned with billboards advertising personal injury law firms. Sources such as the Insurance Research Counsel (IRC) and the Insurance Information Institute (Triple I), funded by insurance companies, have reported that Georgia insurance costs exceed the national average, partly due to legal system abuse. These groups advocated heavily for tort reform and succeeded.

Proponents of the legislation believe the changes will decrease verdicts and litigation costs, which will in turn allow insurance companies to decrease insurance premiums for Georgia businesses. This will, proponents argue, promote business in Georgia, create jobs, and benefit consumers. Opponents argue that the legislation will hinder injured parties' ability to receive fair compensation and lead to disparate results as jurors are left to their own devices.

Regardless of where you stand, tort reform is here, and only time will tell if the promise of stable insurance premiums is realized.

**SB 68: A Shield for Businesses and Insurers**

SB 68, the omnibus tort reform bill, introduces several crucial changes:

- **The introduction of "Phantom Damages" has been eliminated.**

Before SB 68, injured plaintiffs could introduce evidence of "chargemaster" rates, which are typically charged by medical providers to health insurance companies. These rates are often higher than what the medical provider is ultimately paid. Nevertheless, these were the only rates presented to juries to be considered in their awards of damages.

Now, defendants may introduce counterevidence showing jurors the amounts a given plaintiff (or that plaintiff's health insurer) actually paid to the plaintiff's medical provider. Before SB 68, Georgia's common law "Collateral Source Rule" prevented the introduction of these actual rates. Jurors were thus never informed of the actual costs of medical treatment. In an effort to increase transparency and bring verdicts closer in line with the amounts charged for medical treatment stemming from injury, SB 68 alters existing evidentiary rules so that judges and jurors can consider both the aforementioned chargemaster rates *and* the amounts actually charged for treatment. Triers of fact may consider both rates in their evaluation of the reasonable value of the treatment the plaintiff received.

The plaintiffs' bar has argued that injured parties should be entitled to recover the full value of the medical service they receive, regardless of payment. For many years, that premise remained in place under Georgia's Collateral Source Rule. Even with the passing of SB 68, plaintiffs will still be able to present evidence of the full value of the medical services rendered, but defendants can now present competing evidence reflecting the actual amounts paid.

- **"Jury Anchoring" has been banned**.

Attorneys can no longer suggest damage amounts during closing arguments that are not rationally related to the evidence presented, preventing them from "anchoring" jurors' expectations to inflated figures.

Prior to SB 68, attorneys were broadly permitted to reference specific monetary figures and suggest large awards in closing arguments when asserting recovery of non-economic damages, such as pain & suffering. These figures might include salaries paid to professional athletes, payouts from the Georgia Lottery, and other similarly inflated values, which attorneys would use as a baseline or anchor point in jurors' minds to suggest their client's injury should be valued at an amount equivalent to or exceeding those figures.

Plaintiffs' attorneys argue the figures are used only to ease the concerns of jurors who might be reluctant to award a large sum, even where the evidence presented warrants it, and to provide a means of comparison stemming from figures jurors are already familiar with. They argue the change will prevent plaintiffs from recovering the full value of their general damages because they are no longer able to relate a potential award to a familiar monetary figure.

Proponents of the change contend, however, that it will reduce the chances of minor lawsuits resulting in unexpectedly high verdicts generated by jurors who have been predisposed to award unusually high amounts. Time will tell whether this change will have a substantial impact on verdicts in smaller cases.

- **Seat belt evidence is now admissible**.

In motor vehicle accident cases, evidence of seat belt use can now be presented, allowing juries to consider it when determining fault, causation, and damages. Previously, such evidence was inadmissible under Georgia law.

SB 68 allows courts to exclude such evidence where it appears its probative value is outweighed by the danger of unfair prejudice. Nevertheless, given that a majority of states generally allow such evidence in civil litigation, this appears to be an effort to bring Georgia more so in line with the majority rule.

- **Negligent security claims have been limited**.

Property owners' liability for crimes committed on their premises by third parties is now restricted, reducing the risk of costly litigation for property insurers. Specifically, the scope of circumstances under which a third party's criminal conduct might be reasonably foreseeable to a property owner has been narrowed. Trespassers and certain other categories of people, such as those who are not injured on property or those injured only after emergency authorities have been called, are now prevented from asserting claims against property owners.

In addition, apportionment of fault is now permitted between the property owner, plaintiff, and third-party criminals. SB 68 creates a rebuttable presumption that apportionment is unreasonable if the percentage of fault apportioned to third-party criminals is less than that apportioned to property owners, or others who did not act wrongfully. This change aims to prevent liability without reasonable knowledge of a potential hazard.

- **The process of filing a motion to dismiss has been streamlined.**

Previously, a defending party filing a motion to dismiss was still required to answer a plaintiff's complaint, even before a ruling on the motion to dismiss was entered. Defending parties were also required to respond to any written discovery requests served along with the complaint, a procedure that differed from the Federal Rules of Civil Procedure that provide for a stay of discovery during the pendency of a motion to dismiss.

Now, with the passing of SB 68, defendants may file a motion to dismiss in lieu of an answer. While the motion is pending,

an answer is not required and discovery is stayed, aligning Georgia's rules with the Federal Rules in this respect.

• **Double recovery of attorney's fees has been precluded**.

SB 68 also establishes a new code section to prevent civil litigants and their attorneys from recovering attorney's fees and expenses of litigation under multiple statutory provisions. The new code section expressly prohibits double recovery, whether the statute or statutes used authorize awards for compensatory or punitive purposes. Contingency fees agreements also may no longer be used as evidence to establish reasonable attorney's fees. Proponents argue this change will limit unexpectedly high verdicts stemming from jurors' misunderstanding of the law. Opponents argue, on the other hand, that the change prevents plaintiffs from recovering the full value of the legal services they received.

• **Bifurcation of trials in personal injury cases has been expanded.**

Parties in personal injury cases may also now elect to have trial bifurcated (or trifurcated) into separate phases for liability and damages. In such a scenario, Phase 1 addresses liability and allocation of fault, whereas Phase 2, if needed, allows the trier of fact to determine compensatory damages, including special damages and pain & suffering. Phase 3 can then be conducted as well, to address punitive damages. In each phase, the evidence admitted is limited to that which is relevant to the issues before the court in that particular phase.

Bifurcation may be denied if the plaintiff was injured in a sexual offense, or if the amount in controversy is less than $150,000. The change aims to prevent bias against defending parties in earlier phases where evidence of damages or financial condition might be prejudicial but also considers the potential harm to injured parties that might result from being forced to testify multiple times.

• **The use of dismissals without prejudice has been limited.**

Prior to SB 68, plaintiffs could unilaterally dismiss a case without prejudice at any point before the first witness was sworn in at trial, after the expiration of the statute of limitations, and could still recommence it at a later date. Now, such a dismissal without court approval will only be effective within 60 days after the defendant files an answer. A second such dismissal results in a dismissal with prejudice.

Proponents argue this change prevents litigants from fully preparing for trial and spending considerable time and money, only to have trial postponed and the case reinstituted from scratch. The reforms are expected to reduce the frequency and severity of lawsuits, leading to lower claim costs and consequently more stable insurance premiums. The reforms are also aimed at increasing transparency, encouraging trust and public engagement in Georgia's justice system.

**SB 69: Regulating Third-Party Litigation Financing**

SB 69 addresses the growing concern over third-party litigation financing, where investors fund costs and expenses associated with pursuing a lawsuit in exchange for later receiving a portion of the settlement or verdict.

Opponents of these arrangements argue that third-party litigation financing turns personal injury litigation into an investment product, which in turn will develop an industry including lobbyists and banks with incentives that may not align with the plaintiff's best interest – let alone the public at large.

Proponents, on the other hand, argue that third-party financing allows injured parties to pursue legitimate but costly claims. All told, personal injury litigation is a numbers game funded by periodic large verdicts. Without the large verdicts, or third-party funding, plaintiffs' attorneys argue they will take fewer cases and help fewer people.

Key provisions of SB 69 include:

• **Mandatory registration has been implemented for third-party litigation financiers.**

All litigation financiers must register with the Georgia Department of Banking and Finance, provide certain consumer disclosures to their customers, and avoid becoming involved in the strategy or decision-making associated with funded matters, ensuring proper regulation and uniformity.

• **Foreign investment has been restricted**.

Entities outside the United States are now barred from investing in Georgia lawsuits, protecting the state's legal system from external influences. When registering with the Georgia Department of Banking and Finance, litigation financiers must disclose international persons or entities contributing to the financing and cannot receive funding from foreign governments or federally designated foreign adversaries.

• **Disclosure requirements have been implemented.**

Third-party litigation financing agreements providing $25,000 or more in funding must now be in writing, and their existence, terms, and conditions are discoverable by opposing parties, enhancing transparency in legal proceedings. SB 69 aims to prevent the escalation of litigation costs driven by external investors seeking high returns, and to increase the level of transparency in civil litigation by curbing the influence of third-party litigation financing entities.

• **The percentage litigation financiers may recover has been limited.**

Litigation financiers are prohibited from receiving a share of a plaintiff's recovery that exceeds the net recovery by that plaintiff after disbursement of attorney's fees and costs. Entities that provide goods or services to a plaintiff to pursue litigation are also precluded from having a financial interest in litigation financing provided to that plaintiff. Litigation financiers providing $25,000 or more in funding may also be held jointly and severally liable for an award of sanctions or costs against a consumer, entity, or its legal representative. These changes are expected to reduce frivolous lawsuits and increase transparency in litigation by disallowing entities from investing in Georgia lawsuits without consequence.

Opponents argue that litigation financiers help lower-income individuals access Georgia's justice system, while Proponents argue the changes prevent foreign adversaries from profiting from Georgia lawsuits at the expense of Georgia insurers and consumers. Time will tell whether SB 69 discourages such entities from further expanding their business in Georgia.

**Expected Benefits for Insurers and their Policyholders**

The enactment of SB 68 and SB 69 is expected to yield several key benefits for insurers, which proponents believe will ultimately benefit Georgia businesses and consumers:

- **Reduced Litigation Costs**: With fewer frivolous lawsuits and lower damage awards, insurers can expect a decrease in legal expenses and claim payouts.
- **Stable Premiums**: Lower claims costs are expected to lead to more predictable and competitive insurance premiums for consumers.
- **Enhanced Risk Assessment**: Clearer liability standards and reduced uncertainty allow insurers and business owners to more accurately assess and evaluate risk.
- **Improved Market Conditions**: A more balanced legal environment can attract more insurers and businesses to the state, increasing competition and benefiting consumers.

**Conclusion**

Governor Kemp's signing of SB 68 and SB 69 marks a pivotal moment for Georgia's legal and insurance landscapes. By limiting excessive liability, promoting greater transparency in the courtroom, and regulating third-party financing, the laws aim to create a more balanced and predictable environment for businesses and insurers in personal injury litigation.

Proponents hope these laws will prevent the further increase of insurance premiums in Georgia and benefit consumers. Opponents argue they may create constitutional issues regarding Georgians' right to participate in the justice system, and that they may not lead to lower insurance premiums. The full impact of these laws will unfold over time.

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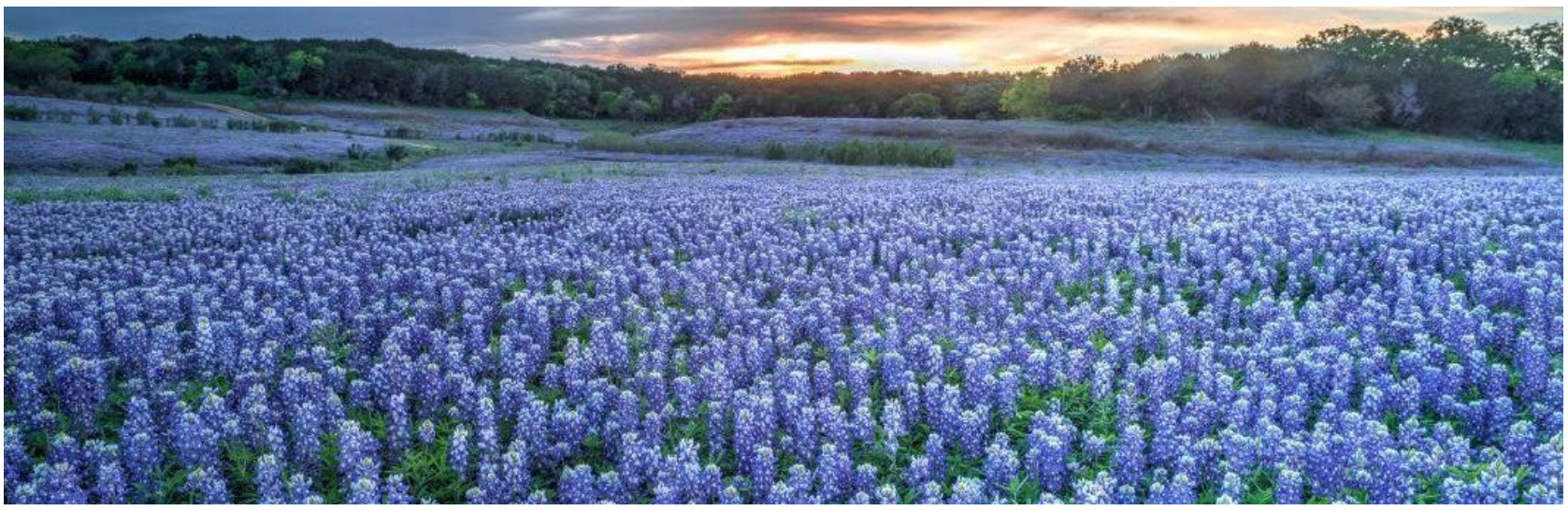

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