



LONESTAR LOWDOWN

Dedicated to Texas First-Party Property Claims

The Zelle Lonestar Lowdown

Friday, October 31, 2025

ISSUE 30

Welcome to The Zelle Lonestar Lowdown, our monthly newsletter bringing you relevant and up-to-date news concerning Texas first-party property insurance law.

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 Tippet](#), and [Steve Badger](#).



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Upcoming Events

You don't want to miss this!

November 3 – [Steven Badger](#) will present "Big Picture Issues – Big Picture Solutions" at the Joint Claims Executives Association [Fall Conference](#) in Scottsdale, AZ.

November 4 – [Dennis Anderson](#) presenting at the Wisconsin Fire Loss Association in Fond du Lac, WI.

November 13 – [Steven Badger](#) will be the Keynote Speaker presenting "Whoever Said Insurance Was Boring? 30 Years of Fascinating Claims Stories" at the [PLRB Large Loss Conference](#) in Dallas, TX.

November 13 - 14 - [Brandt Johnson](#) will present "Full of Hot Air or a Legitimate Hail or Wind Claim?" with Howard Altschule (FWC) and Annette Tarquinio (Engle Martin) at the [PLRB Large Loss Conference](#) in Dallas, TX.

December 10 – [Steven Badger](#) will present "Badger and Merlin Discuss The Big Issues" at the [2025 First Party Claims Conference](#) (FPCC) in Boston, MA.

December 10 - [Jennifer Gibbs](#) will participate in a panel on the topic of Artificial Intelligence in P&C claims at the [2025 First Party Claims Conference](#) (FPCC) in Boston, MA.

January 25 – [Lindsey Davis](#) will present "Common Abuses in First Party Property Claims" at the [2026 NACA Annual Convention](#) in Durant, Oklahoma.

January 25 – [Steven Badger](#) will deliver the keynote presentation "Insurance and Public Policy Issues Arising from the 9/11 Terrorist Attack" at the [2026 NACA Annual Convention](#) in Durant, Oklahoma.

Registration is over half full, secure your spot today!



2026 WHAT THE HAIL? CONFERENCE

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THURSDAY 2/12 | FRIDAY 2/13
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Register Now!

Contact abannon@zellelaw.com with any questions.

TODD TIPPETT'S TOP 10 TIPS FOR... KEY COMPONENTS TO INCLUDE IN A RESERVATION OF RIGHTS LETTER

1. The Factual Background of the claim, as understood by the carrier.
2. Details about the status of the adjustment and/or investigation to date.
3. Notice that the carrier continues to investigate and adjust the claim.
4. Pertinent policy language applicable to the claim and applicable to why the carrier is reserving rights.
5. A reference to applicable law that may impact the claim, if necessary.
6. Any explanation of why the carrier is reserving rights under the policy or the law.
7. A request for an Examination Under Oath, if necessary.
8. A detailed Request for Information applicable to the claim, its investigation, its adjustment and to clear up the reason for the reservation of rights.
9. A decision as to coverage on any components of the claim that the carrier is no longer investigating or adjusting.

News From the Trenches

by [Steven Badger](#)

There are a number of matters in our office right now – both in litigation and in appraisal – where the damaged roofs have been replaced. The work is done. Finished. Presumably, the contractor has submitted invoices for the work and has been paid.

But despite this, in these matters the insured and its representatives are refusing to provide the insurance company or appraisal panel with invoices showing what the contractor charged and refusing to provide documents showing how much was paid. Instead, the insured is providing budgets or Xactimate estimates, arguing that the amount actually spent in performing the work is not relevant.

I wasn't born yesterday (or the day before, or the day before, etc.....). It doesn't take a Mensa member to deduce that the only reason they won't share the actual job cost is because it is less than the inflated Xactimate pricing they are trying to get the insurance company to pay. If the insurance company "only" paid the real invoice cost, there would be no money left over to pay the public adjuster, to pay the appraiser, to cover the deductible, to go to Disneyworld, and so on.

This charade grows tiresome.

The correct answer here, legally and morally, is not difficult. Either in litigation or in appraisal. Insurance policies have language in their valuation clauses stating that one of the ways the claim measure is determined is by looking at the "amount actually spent." Others say "amount incurred." Or something similar.

Well, duh. Yes, one would think that what it actually costs to replace the roof is relevant in determining a claim measure when the policy requires that the insurer pay the "amount actually spent."

If you have attended my presentations, you heard me speak about one of my favorite Texas court decisions – the *Whitestone* case. The facts are pretty simple. The insurance company agreed that the roof was damaged and measured the claim at \$1.7m RCV and \$1.2m ACV. The insurance company paid the \$1.2m ACV. When the work was done, the insured's public adjuster presented a contract with the "general contractor" for \$2.4m and advised that was the project cost. The insurance company thought that was high and refused to pay the requested additional \$1.2m in RCV holdback.

Predictably, the insured brought a lawsuit to recover the additional \$1.2m. But here's where it gets interesting. During litigation, it was learned that the roof was not installed by the "general contractor". Instead, it was actually installed by a reputable local roofing contractor – who did a like-kind-and-quality roof replacement for \$816k. Yes, far less than the insurance company's ACV measure (and whoever said that Xactimate pricing is low?).

The federal judge who heard the case was not happy. In his written decision, he held that "[u]nlike [the general contractor's] specious numbers, the record shows the only amounts actually spent that were necessary to replace the roof were the payments to [the roofing contractor]". The judge further held that the \$816k paid to the roofing contractor, consistent with the policy language, "best describes 'the amount actually spent that is necessary to repair or replace the lost or damaged property.'" Based on these findings, the court entered judgment for the insurance company as no additional amounts were owed above the paid ACV measure.

10. An offer to discuss the letter and the reason for the reservation of rights under the policy or law.

Feel free to contact [Todd M. Tippet](#) at 214-749-4261 or tippet@zellelaw.com if you would like to discuss these Tips in more detail.

additional amounts were owed above the paid ROV measure.

A copy of the *Whitestone* decision is available [here](#).

What is so hard about this?

Nothing. Unless the insured and others are trying to profit from the claim.

Texas law is very clear – in the claims process, in appraisal, and in litigation. Assuming a like-kind-and-quality repair, the insured is entitled to recover the amount actually spent in completing the work. Not some inflated hypothetical (and at times “specious”) estimate or fake contract number.

So please just tell us what you actually spent to repair the damage and let’s move on.



AI Update

The Growing Trend of AI-Related Insurance Policy Exclusions

by [Jennifer Gibbs](#)

As AI use increases in current business operations, insurers are racing to define their risk appetite for this rapidly evolving exposure. Over the past year, several carriers have introduced exclusions and endorsements addressing AI-related risks in professional liability policies.

Berkley recently introduced one of the broadest examples to date. Its “absolute” AI exclusion (intended for D&O, E&O, and Fiduciary Liability policies) eliminates coverage for any claim “based upon, arising out of, or attributable to” the actual or alleged use, deployment, or development of artificial intelligence. The endorsement goes on to enumerate specific applications such as AI-generated content, failure to detect AI-produced materials, inadequate AI governance, chatbot communications, and even regulatory actions related to AI oversight.

Hamilton Insurance Group has taken a similarly cautious approach. Its Generative Artificial Intelligence Exclusion for professional liability policies removes coverage for any claim, wrongful act, damages, or defense costs based upon, arising out of, or in any way involving any actual or alleged use of “generative artificial intelligence” by the insured. The endorsement defines “generative artificial intelligence” as “any system that produces content such as text, imagery, audio, or synthetic data in response to user prompts, including but not limited to ChatGPT, Bard, Midjourney, or Dall-E.”

These exclusions demonstrate an emerging consensus among insurers: the uncertainty surrounding AI-driven technologies, particularly in areas of authorship, data integrity, and misrepresentation, pose risks that traditional policy language was not designed to address. For now, most carriers are choosing to exclude these exposures outright while the industry evaluates how to measure and price AI-related risk.

In time, the market may evolve toward affirmative coverage offerings tailored for AI operations, similar to cyber-related coverage twenty years ago. Until then, brokers and insureds should not assume existing D&O or E&O coverage includes AI-related events, especially in industries that already rely heavily on AI tools.

One Dip and Done: Summary Judgment as a Shield Against Costly Double Dipping Claims

by [Marsheldondria “Dondria” Johnson](#)

In *Frederich v. Trisura Specialty Ins. Co.*, the 5th Circuit affirmed the granting of Trisura’s Motion for Summary Judgment. That judgement was based on the insurer’s payment of an appraisal award plus interest. The court found this foreclosed the Insured’s extra contractual claims. *Frederich v. Trisura Specialty Ins. Co.*, No. 24-40748, 2025 WL 2840272 (5th Cir. Oct. 7, 2025).

The dispute arose from wind and hail damage to the Plaintiffs’ property. Defendant Trisura’s investigation concluded that there was partial coverage for the claimed damage. *Id.* Dissatisfied with this result, Plaintiff invoked his Policy’s appraisal clause. The appraisers issued an award for \$27,670.04 in covered losses. *Id.* Trisura paid the appraisal award, less the deductible and amounts previously paid. *Id.* Plaintiff brought suit alleging violations of Chapters 541 and 542 of the Texas Insurance Code as well as breach of the common law duty of good faith and fair dealing. *Id.* Trisura paid \$2,996.27 for accrued interest, mooted Plaintiff’s prompt-payment claims under Chapter 542, causing Plaintiff to amend his complaint, asserting only the bad-faith tort claims under Chapter 541. *Id.* Trisura moved for summary judgment, arguing that its payment of the appraisal award plus interest extinguished Plaintiff’s claims. *Id.* Plaintiff argued that the plain language of Chapter 541 allows an insured to recover tort damages that are cumulative to and distinct from any breach-of-contract damages. *Id.* Summary judgment was granted, and Plaintiff appealed, attempting to use Trisura’s improper withholding of his claim payment as an independent tort. *Id.*

In its analysis, the court looked to its decision in *Mirelez v. State Farm Lloyds*, where it found that once the policy benefits have been paid, there must be an independent injury to recover in tort. *Mirelez v. State Farm Lloyds*, 127 F.4th 949 (5th Cir. 2025). The court further relied upon the Texas Supreme Court’s decision in *Ortiz v. State Farm Lloyds*, which held that when the only “actual damages” that a plaintiff seeks are policy benefits that have already been paid pursuant to an appraisal provision, then the insured cannot recover for bad faith under Chapter 541 or in common law tort. *Ortiz v. State Farm Lloyds*, 589 S.W. 3d 127 (Tex. 2019). The Fifth Circuit further relied on *USAA Tex. Lloyds Co. v. Menchaca*, where the Texas Supreme Court found the insured could “recover policy benefits as actual damages in tort” only when the insured had not already recovered those benefits. *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479 (Tex. 2018).

Based on this precedent, the Fifth Circuit affirmed the lower court’s decision granting Trisura’s Motion for Summary Judgment.

The Lowdown:

This case reinforces that insurers can effectively preclude additional bad faith tort recovery by promptly paying the policy benefits determined through the appraisal process. Moreover, if additional tort claims are asserted, there is now extensive precedent supporting the successful use of summary judgment motions to reduce litigation costs and insurers’ exposure further.

While we can never guarantee case outcomes, filing a motion for summary judgment is a critical procedural tool for insurers because it allows them to seek dismissal of claims without the need for a full trial. When successful, summary judgment resolves the case early before more costly phases such as oral and written discovery and trial preparation begin. This can significantly

reduce defense costs, including attorneys' fees and other litigation expenses.

Additionally, early resolution through summary judgment limits an insurer's risk of an adverse jury verdict, potential punitive damages, or prolonged legal uncertainty. In venues that fall under the purview of the Fifth Circuit, where the court increasingly requires insureds to show an independent injury beyond the delayed payment of policy benefits, insurers can leverage this legal standard to obtain dismissal of bad faith and other extra-contractual claims.

With this precedent in mind, steering high-exposure claims into the appraisal process may provide insurers with an efficient path to resolution. By securing an appraisal award and promptly paying both the award and any applicable interest, insurers can capitalize on this favorable line of case law to render any further tort-based litigation moot. While there is no one-size-fits-all legal strategy, given the proper set of facts, this strategy not only has the potential to save thousands in litigation costs but also allows legal teams to allocate time and resources toward cases with less well-settled legal questions.

Ultimately, the strategic use of summary judgment in fact scenarios similar to those discussed herein has the potential not only to cut costs but also to strengthen insurers' negotiating position in future disputes.

Appraisal Doesn't Toll the Clock: Texas Court Upholds Suit Limitation Clause Despite Post-Denial Appraisal Demand

by [Austin Taylor](#)

In Texas, once a claim denial has been issued, the clock starts ticking for an insured to file a lawsuit. In Texas, the default statute of limitations for breach of contract claims is four years. However, Texas has long recognized that parties are free to contract around this default rule and may agree to a shortened limitations period so long as the period is at least two years from the date the cause of action accrues. See TEX. CIV. PRAC. & REM. CODE § 16.070(a). In practice, this means that the shortest limitations period parties can agree to is two-years and one-day.

A recent decision from a federal court in Texas highlights a novel argument by the insured to avoid the enforcement of a contractual "suit limitation" in property insurance policies. In *Christian Care Center v. American Alternative Insurance Corporation*, the insured argued that

the policy's appraisal clause was a precondition to filing suit, and because neither party had invoked appraisal previously, the contractual limitations period had not begun to run. No. 4:25-CV-00321-O, 2025 WL 2831472 (N.D. Tex. Oct. 6, 2025). The United States District Court for the Northern District of Texas, Fort Worth Division, soundly rejected this argument, holding that the insured claim was time-barred pursuant to the policy's contractual limitations period.

Factual and Procedural Background

The dispute arose after Christian Care Center ("Christian Care"), reported damage from an April 27, 2020 storm event to its insurer, American Alternative Insurance Corporation ("American"). The claim was submitted on February 2, 2022. Following an investigation, American denied coverage on July 28, 2022, stating that the damage was attributable to prior claims rather than the reported storm.

More than two years later, on February 18, 2025, Christian Care filed suit in Texas state court alleging breach of contract and violations of the Texas Insurance Code related to unfair claims practices, and American's failure to promptly pay the claim. American removed the matter to federal court in the Northern District of Texas and moved for summary judgment, arguing that all claims were time-barred under the policy's contractual limitations clause. Christian Care argued that its claims were not time barred and also asked the court to compel appraisal and pause the case.

Court's Analysis

The court addressed three interrelated questions: when the claims accrued, what deadlines applied, and whether the policy's appraisal provision had to be invoked before suit.

First, the court identified the accrual date—the point at which the legal claim arises and the limitations clock begins to run. Pursuant to Texas law, the court concluded that the clock began to run from the date of American's denial letter dated July 28, 2022. The court, accordingly, treated July 28, 2022 the accrual date Christian Cares' claims.

Second, the court examined what limitations period applied. Although breach-of-contract claims in Texas typically have a four-year statute of limitations, parties may agree by contract to a shorter period so long as it is at least two years from accrual. The policy at issue included a "two years and one day" suit limitation provision, which would be measured from the date the cause of action accrued. The court contrasted this approach with policies that improperly start the clock at the date of loss, which can unlawfully shorten the window to less than two years in violation of Texas law. Because this policy tied the deadline to denial—and provided at least two years—the clause was enforceable.

The court then considered the Insurance Code claims. Texas Insurance Code Chapter 541 (unfair claims practices) has its own two-year statute of limitations. Accordingly, those claims had to be filed by July 28, 2024. Chapter 542 of the Texas Insurance Code (prompt payment of claims) does not include a specific limitations period and is considered a contract-based remedy; thus, the court reasoned that it can be limited by the policy's suit limitation clause. As a result, the policy's two-years and one-day deadline applied to both the breach-of-contract claim and the prompt-payment claim.

Applying these limitations periods, the court held that Christian Care's lawsuit, filed on February 18, 2025, was untimely across the board. The Chapter 541 claim was late under the two-year statute. The contract and Chapter 542 claims were late under the policy's "two years and one day" limitation from the denial date.

Finally, the court addressed the policyholder's argument that appraisal was a required precondition to filing suit and therefore extended the deadline. The policy stated that either party "may" demand appraisal if they disagree on the amount of loss. The court read "may" as permissive, not mandatory. Because appraisal was optional and contingent on a disagreement over the amount of loss, it was not a condition that had to be satisfied before filing suit. Nor did the policy's language convert appraisal into a tolling mechanism. In short, appraisal did not pause or extend the suit limitations period, and the court would not rewrite the clause to make appraisal an unwritten prerequisite to litigation. The court also noted the practical inconsistency of claiming appraisal was required when Christian Care had filed suit before attempting to invoke it.

Conclusion

The *Christian Care Center v. American Alternative Insurance Corporation* decision reinforces the enforceability of properly drafted suit limitation clauses in Texas insurance policies. The court's ruling confirms that insurers can rely on these contractual provisions—so long as they comply with statutory minimums—as a defense to time-barred claims. Additionally, the court rejected attempts to use the appraisal clause as a tolling mechanism, affirming that optional appraisal provisions do not delay or extend the deadline to file suit. For carriers, this case is a strong reminder of the value of clear policy language that complies with Texas's statutory minimums for contractual limitations periods.

Whose Loss, Whose Money? A Keeneshner on Mortgagee Rights Under Property Insurance Policies

by [Alexander Masotto](#)

When a hailstorm, fire, or other natural disaster strikes, it is not just the property owner who has something to lose. That is why most insurance policies, commercial and residential alike, contain a mortgagee or loss payee clause that ensures lenders are protected when property is damaged. The purpose of a mortgagee loss payable clause in an insurance policy is to “protect the security interest of the mortgagee who has advanced money to others for the purchase of property, and who has taken a note and deed of trust, or mortgage on the subject property.” *Smith v. Tex. Farmers Ins. Co.*, 82 S.W.3d 580, 584 (Tex. App.—San Antonio 2002, pet. denied).

Mortgagee/loss-payee clauses in insurance policies typically fall into two categories. One is a simple or “open” clause, which provides that any loss is payable to the mortgagee “as its interest may appear.” See *Old Am. Mut. Fire Ins. Co. v. Gulf States Fin. Co.*, 73 S.W.3d 394, 396 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). Under an open clause, the mortgagee stands in the shoes of the policyholder, enjoying the same rights as the policyholder enjoys—no more, no less. If coverage is defeated because of an act of the policyholder, the mortgagee is likewise denied recovery. See, e.g., *Ingersoll–Rand Fin. Corp. v. Employers Ins. of Wausau*, 771 F.2d 910, 913 n. 3 (5th Cir.1985).

The other type of clause, usually referred to as a “New York”, “standard”, or “union” clause, provides contract rights to the lender loss payee that are independent of the insured’s actions. While wording between policies may vary, the additional rights afforded typically provide that “insurance, as to the interest of the mortgagee only, shall not be invalidated by any act or neglect of the mortgagor or the owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership [of] the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy, provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee shall, on demand, pay the same. See, e.g., *Don Chapman Motor Sales, Inc. v. Nat’l Sav. Ins. Co.*, 626 S.W.2d 592, 595 (Tex. App. 1981, writ ref’d n.r.e.). Under a “standard” mortgage clause the provision that “this insurance . . . shall not be invalidated by any act or neglect of the mortgagor,” means that a mortgagee can have rights to recover even when the insured does not. See *Ennis State Bank v. United States Liab. Ins. Co.*, No. 3:15-CV-2087-B, 2016 WL 560367, at *5 (N.D. Tex. Feb. 12, 2016) (citing *SWE Homes, LP v. Wellington Ins. CO.*, 436 S.W.3d 86, 90 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Here, “[i]t is sometimes said that the standard mortgage clause creates a separate contract between the insurer and the mortgagee.” *SWE Homes, LP*, 436 S.W.3d at 90.

If a foreclosure occurs at the subject property, Texas courts have held that a “mortgagee’s [insurable] interest under an insurance policy containing a mortgagee loss-payable clause is limited to the indebtedness which the mortgagor owes under the note and [deed of trust.]” *Smith*, 82 S.W.3d at 584; see also *Peacock Hosp., Inc. v. Ass’n Cas. Ins. Co.*, 419 S.W.3d 649, 653 (Tex. App.—San Antonio 2013, no pet.). A foreclosure under a deed of trust has the effect of reducing the indebtedness owed by the mortgagor by the amount paid for the property at foreclosure. See *Campagna v. Underwriters at Lloyd’s London*, 549 S.W.2d 17, 19 (Tex. App. —Dallas 1977, writ ref’d n.r.e.). However, where a “foreclosure fully satisfies the mortgage debt or the mortgage debt is otherwise released as a result of the foreclosure, the mortgagee no longer has a right to any of the insurance proceeds paid for a pre-foreclosure loss.” *Peacock Hosp., Inc.*, 419 S.W.3d at 653–54 (citing *CWCapital Asset Mgmt. LLC v. Wausau Bus. Ins. Co.*, No. 04–08–00457–CV, 2009 WL 1900413, at *4 (Tex. App.—San Antonio July 1, 2009, no pet.); *Helmer v. Tex. Farmers Ins. Co.*, 632 S.W.2d 194, 196 (Tex. App.—Fort Worth 1982, no writ); *Campagna*, 549 S.W.2d at 18.).

Stated differently:

Once the mortgage debt is satisfied or released, the mortgagee no longer has an interest under the insurance policy and the insurer is not liable to pay the mortgagee for any loss-claims paid under the policy after the mortgage debt is satisfied. *Pak-Petro, Inc. v. Am. W. Home Ins. Co.*, No. 1:12-CV-247, 2013 WL 5356898, at *6 (E.D. Tex. Sept. 9, 2013).

Only where “a deficiency remains *following* the foreclosure [does] the mortgagee retain[] a right, but only to the amount of the insurance proceeds necessary to satisfy the deficiency.” *Peacock Hosp., Inc.*, 419 S.W.3d at 653 (citing *Campagna*, 549 S.W.2d at 18; *CWCapital Asset Mgmt. LLC*, 2009 WL 1900413, at *4) (emphasis supplied).

* * *

Recently, the United States District Court for the Northern District of Texas in *Lakeview Loan Service v. American Risk Insurance Company*, No. 3:24-cv-1638-N, 2025 WL 2880812 (N.D. Tex. Oct. 9, 2025) analyzed a mortgagee’s rights under a “standard” loss payee clause.

In 2021, the insured purchased her residence and initially secured a mortgage approved by Lakeview Loan Services’ predecessor. Eventually, the insured’s deed of trust was assigned to Lakeview as the lender.

The insurer, American Risk Insurance Company, issued an insurance policy to the insured, that listed Lakeview as an additional loss payee and mortgagee. After the insured defaulted on her mortgage payments, Lakeview foreclosed on the property and purchased the same in September 2022 for \$220,000. About one month later, in November 2022, the property burned down (resulting in a total loss) on the insured’s scheduled eviction day.

Thereafter, Lakeview submitted a claim for fire damage to the residence, but the claim was denied. Lakeview no longer had an insurable interest under the policy’s standard loss payee clause. A lawsuit ensued, and Lakeview moved for partial summary judgment arguing that it was entitled to the insurance proceeds because the insured assigned the policy to Lakeview.

Under the policy at issue, Lakewood’s right to receive insurance proceeds were contingent upon: (1) the insurer denying the insured’s insurance claim; and (2) Lakeview’s compliance with the standard mortgage clause conditions. Specifically, Lakeview was required to notify the insurer of “any change in ownership, occupancy or substantial change in risk known to the mortgagee. Failure of the mortgagee to comply with [the conditions of the mortgage clause] shall void this policy as to the interest of the mortgagee.” Here, Lakeview failed to notify the insurer that it took ownership of the property through the foreclosure proceedings. Moreover, the insured never filed an insurance claim at the time of November 2022 fire loss as she lost her insurable interest in the property on the date of the September 2022 foreclosure sale.

Lastly, the record revealed that Lakeview purchased the property at the foreclosure sale for \$220,000, while the insured’s unpaid balance on the note totaled \$201,014.50 at the time of foreclosure. Because Lakeview purchased the subject property at foreclosure for more than the original note, the Court found that there was no longer a deficiency, and Lakeview was made whole through the foreclosure. Thus, Lakeview was not entitled to any insurance proceeds under the policy.

Takeaways:

It is imperative for insurers to recognize that mortgagee or loss-payable clauses create distinct rights for lenders, which may survive certain actions or inactions of the property owner, particularly under a standard mortgage clause. Careful attention to the type of clause, along with clear documentation of mortgage debt and foreclosure status, is essential to accurately assess exposure and determine who may ultimately have an interest in insurance proceeds. Requesting underlying loan documentation can also help insurers evaluate whether a mortgagee has an interest, regardless of whether a foreclosure has occurred. Insurers should also verify mortgagee interests before paying claims, and proactively manage potential conflicts between insureds and mortgagees to minimize dispute and litigation risk.

A Permissive Appraisal Provision Does Not Constitute a Condition Precedent

by [Scott Keffer](#)

The U.S. District Court for the Northern District of Texas, Fort Worth Division, recently granted an insurer’s motion for summary judgment, rejecting the insured’s argument that the contractual limitations period (2 years + 1 day) contained in its policy was unlawful and that the policy’s appraisal provision constituted a condition precedent that must be invoked prior to filing suit (despite filing suit prior to demanding appraisal) and before a limitations period begins to accrue or there would be waiver. *Christian Care Ctr. v. Am. Alternative Ins. Corp.* , No. 4:25-CV-00321-O, 2025 WL 2831472 (N.D. Tex. Oct. 6, 2025).

The insured submitted a property damage claim, which the insurer denied on July 29, 2022. On February 18, 2025, the insured filed suit alleging breach of contract and violations of the Texas Insurance Code. *Id.* at *1. The insurer sought summary judgment, arguing that all of the insured’s claims were time-barred. Conversely, the insured argued that because the policy unlawfully reduced the limitations period, its claim was subject to a four-year limitations period and that such period had not yet been triggered because the policy’s appraisal provision had not been waived or invoked as a condition precedent to filing suit (without acknowledging that it was the insured, in fact, who filed suit before demanding appraisal). *Id.* at *2.

The court quickly found that the policy’s two-year-and-one-day limitations period was enforceable under Texas law. *Id.* Moreover, the court also found that the denial letter “unambiguously stated that Plaintiff would not receive any insurance payments, thus triggering the accrual date. . . . [and because] Plaintiff filed its claims over two years and six months after the accrual date, these claims are time-barred.” *Id.* at *3. Further, the court concluded that reopening the claim for appraisal and then affirming the prior claim denial did not alter the trigger date for the limitations period—rather it remained the date of the initial claim determination that was issued on July 29, 2022. *Id.* at *2.

Finally, the court explained that the policy’s appraisal provision utilized permissive rather than mandatory language and that such language evidenced an intent that appraisal be an optional remedy in the event of dispute on the amount of loss rather than a mandatory condition precedent to filing suit. *Id.* at *3 (“The Court declines to strain the construction of the provision to require express invocation or waiver of a conditional right prior to filing suit . . .”).

As such, the court granted the insurer’s motion for summary judgment and dismissed the case with prejudice. *Id.* at *4.

The Lowdown: Texas courts enforce lawful contractual limitations periods and will likely not consider a permissive appraisal provision to constitute a condition precedent to filing suit or a trigger for a limitations period to begin accruing. Instead, the date of the claim denial triggers the limitations period, which is not affected by reopening the claim to participate in an appraisal that does not alter the initial claim determination.

Spotlight



[Steven Badger](#) and [Kristin Cummings](#) recently presented a CE seminar with Jonathon Held in Dallas, TX covering Property Loss Valuations and Appraisal of Property Losses.

Reach out to Zelle LLP if your organization would benefit from a presentation, class, discussion, or seminar from one of our attorneys.

Contact Us!

Insurer’s Loss Reserves Ruled Discoverable in Bad Faith Action

by [Nicholas Smetzer](#)

A recent case in the Northern District of Texas, Dallas Division, represents an expansion of insured plaintiffs’ ability to discover reserves. The catch? Bad faith.

When Plaintiffs LEV Investments, Inc. and Eagle Rock Blvd. LLC’s property suffered hailstorm damage, they felt that their insurers did not properly adjust their claim. *LEV Invs., Inc. v. Princeton Excess & Surplus Lines Ins. Co.* , No. 3:24-CV-02463-L, 2025 WL 2822882, at *1 (N.D. Tex. Oct. 2, 2025). As often happens with hail claims, they filed suit against their insurers—in this case Princeton Excess and Surplus Lines Ins. Co. and Westchester Surplus Lines Ins. Co.—alleging breach of contract, violation of the Texas Prompt Payment of Claims Act, and, importantly, bad faith. *Id.* According to the Plaintiffs, the Defendants failed to reasonably investigate the condition of their roofs, and their recovery under their policies suffered because of it. *Id.* To prove this bad faith failure to investigate, Plaintiffs sought discovery of Defendant’s loss reserves regarding the properties. *Id.* The Defendants withheld the reserves, claiming that information was irrelevant to Plaintiffs’ case. *Id.*

The insured argued that if the insurer’s loss reserves were the same numbers communicated to the insured, and if the data reflected the numbers provided by contractors, appraisers, and others sent to evaluate the loss, then this is indicative of a good faith adjustment. *Mario Guardado & Maria Guardado v. State Farm Lloyds & Dion Mckinley*, No. 3:14-CV-2641-P (BF), 2015 WL 12724048, at *3 (N.D. Tex. Dec. 21, 2015). Contrarily, if the reserves fluctuated wildly, or if the insurer insisted only minor damage was present, but the loss reserves reflected a mores substantial loss, then this could be used as evidence of bad faith. *See id.* Plaintiffs here argued that the loss reserves information was highly relevant in demonstrating that the Defendant’s bad faith was “more or less probable.” *See* LEV Invs., Inc., 2025 WL 2822882 at *2.

The carriers argued that loss reserves were irrelevant and should be undisclosed. Loss reserves are only estimates put in place to ensure sufficient monies are put aside by the carrier to cover any *potential* loss at the insured’s location. Ultimately, loss reserves are are not objective valuations of damage and could easily influence a jury to award more than a case is worth. *See Columbia Mut. Ins. Co. v. Kerrville Pro. Props., Ltd.* , No. SA–16–CA–00973–XR, 2017 WL 7805755, at *5 (W.D. Tex. July 12, 2017). Furthermore, insurers oftentimes make coverage decisions that do not have to do with their ultimate loss reserve. *See Dizdar v. State Farm Lloyds*, No. 7:14–CV–402, 2015 WL 12780640, at *8 (S.D. Tex. Jan. 21, 2015). This formed the core of Defendant’s argument: an “unfounded belief” that loss reserves would prove undervaluation is not justification for overbroad and potentially prejudicial discovery. LEV Invs., Inc., 2025 WL 2822882 at *2

These arguments mirror the majority/minority split on this issue within the state, with the former being more liberal towards discovery

of loss reserves, and the latter tending to be more—*reserved*, shall we say—about allowing widened discovery. See *Brabo Int'l Grp., Inc. v. United Fire & Cas. Co.*, No. 5:19-CV-66, 2020 WL 6440717, at *4 (S.D. Tex. Aug. 17, 2020); *but see Gutierrez v. State Farm Lloyds*, No. 7:14-CV-430, 2015 WL 13188353, at *8 (S.D. Tex. Jan. 22, 2015).

In this tug of war between the discoverable and non-discoverable reserves, the Northern District Court sided with the former in an opinion dated October 2, 2025. LEV Invs., Inc., 2025 WL 2822882 at *1. The Court focused on the evidentiary foundation that Plaintiff provided in establishing a likelihood of bad faith. *Id.* Particularly, the Court found that Plaintiff's requests for the loss reserve information was sufficiently tailored to address the effect of the allegedly pretextual investigation, rather than so broad as to invite prejudicial comparisons to other claims paid by the insurer. *Id.*; *see also Columbia Mut. Ins. Co.*, 2017 WL 7805755, at *5.

This case reflects that some Texas courts continue to join the majority opinion that loss reserves are discoverable. Therefore, insurers should keep in mind that these calculations and evaluations are not necessarily confidential. A court that is reasonably convinced of the possibility of bad faith has increasing case law allowing it to look at loss reserves, even if what is shown is not necessarily admissible in front of a jury. Fed. R. Civ. P. 26(b)(1). Going forward, insurers might do best to ensure that their loss reserves act as a “best estimate of the eventual claim” that reflect the reality of the claim. *See O'Donnell v. Avis Rent A Car Sys. LLC*, 2021 WL 5282694, at *3 (N.D. Tex. Apr. 14, 2021). In other words, act as if your reserves are an open book, because they might very well become one.

BEYOND THE BLUEBONNETS

Corrosion Exclusions – Differences Across the Atlantic:

by [José Umbert](#) (London Office) and [Tom Papa](#)

Corrosion exclusions are not interpreted in the same manner on both sides of the Atlantic Ocean. Generally speaking, in the U.K., corrosion exclusions only apply to exclude the claim where the corrosion event was a gradual process, often naturally occurring over a period of time. Sudden events involving corrosion often fall outside the exclusion and are covered.

In the U.S., generally speaking, any corrosion present in the events giving rise to the loss would be sufficient to trigger the exclusion with only the ensuing damage caused by the corrosion falling for coverage subject to the terms and conditions of the policy.

What follows is a brief review of both legal systems and how the caselaw reveals how the courts from both jurisdictions have generally nuanced these exclusions and shaped coverage outcomes, in ways that may be unexpected depending on where you are located.

English Law:

English courts take a temporal approach, viewing corrosion in two possible ways. One sees corrosion as a gradual, ongoing deterioration process, akin to wear and tear, typically excluded from coverage. The other interpretation occurs when the corrosion itself (not the damage caused by corrosion) occurs suddenly, and often results in corrosion damage being covered, that is the corrosion exclusion does not apply.

Another way to visualize this is that one interpretation requires the corrosion to be truly fortuitous and unexpected and therefore covered. Whereas, for the other, the exclusion is triggered because corrosion is to be expected as part of gradual deterioration. The latter would arise in the ordinary course of use and would be considered general wear and tear. The former occurs from a fortuitous event, and one that is not expected. Caselaw helps visualize this.

Take for example, *Burts & Harvey Ltd v Vulcan Boiler and General Insurance Co Ltd (No.1) [1966] 1 Lloyd's Rep. 161*. In *Burts*, the negligent installation of steel tubes to transmit steam, was such that steam was able to escape and mix with other acids resulting in corrosion of the steel pipes themselves.

The judge in *Burts* determined that a corrosion exclusion only applied to that corrosion which would have been inevitable and therefore not fortuitous. Whereas in that case, the corrosion was a sudden or accidental event and thus fell outside of the exclusion and was covered. This is consistent with the English law approach to gradual deterioration exclusions where inevitable damage is often excluded (*See e.g. Leeds Beckett University (formerly Leeds Metropolitan University) v Travelers Insurance Co Ltd [2017] EWHC 558 (TCC)*).

Conversely, corrosion to the walls of a reactor (where natural corrosion would occur) would fall within a corrosion exclusion and would not be covered because the corrosion occurred naturally over a period of time. (*MDS Inc v Factory Mutual Insurance Co 2021 ONCA 594*). Albeit cover may exist for the resulting physical damage caused by corrosion as such damage would be fortuitous and would not fall under the exclusion subject to the terms and condition of the policy.

The approach taken by English courts differs from that generally taken in the U.S.

U.S. Law:

Generally speaking, and subject to the laws of each state, U.S. jurisprudence adopts a sequential event approach, analyzing corrosion as an initially excluded peril albeit one that may trigger covered ensuing perils. Whether the corrosion was naturally occurring or a sudden event is of less importance, rather U.S. courts often differentiate between the excluded corrosion damage and consequent loss from an insured peril, allowing coverage of the latter under “ensuing loss” or “resulting damage” clauses.

This approach has been generally adopted because U.S. courts take a literal approach to the language used in the policy itself, absent a finding of ambiguity. Essentially, if corrosion is excluded, and corrosion occurs, whether naturally or fortuitously, the exclusion is triggered and there is no coverage.

As above, the laws of each state should be checked to ensure consistency, but generally speaking, the existence of corrosion triggers the exclusion regardless of how the corrosion occurred. In such an event, whether the loss was sudden or natural is not important, all that matters was that the loss was caused by corrosion. (*See e.g. Wilfredo Nunez et al. v. Merrimack Mutual Fire Insurance Co.*, No. 2013-129-Appeal, Supreme Court of Rhode Island, (April 17, 2014).

For example, in *Resorts International, Inc. v. American Home Assurance Co.* 311 So. 2d 806 (Fla. Dist. Ct. App. 1975) the Florida District Court of Appeal found that damage to an insured air conditioning unit that resulted from corrosion was not covered under an all risks boiler and machinery policy which insured any “sudden and accidental breakdown” of the insured equipment. The court found that as it was undisputed that corrosion caused the air conditioning unit to fail, the exclusion of corrosion or erosion of material applied to exclude the claim. An analysis of how the corrosion occurred was not necessary, given the exclusion.

Another example is *Central Louisiana Electric Co. v. Westinghouse Electric Corp.* 569 So. 2d 120 (La. Ct. App. 1990), *aff'd*, 579 So. 2d 981 (La. 1991) there the appellate court found the corrosion exclusion was unambiguous and reflected the parties’ clear intent to exclude all coverages relating to damages caused by corrosion. When expert evidence established that corrosion caused the damage (cracks in the turbines) the court held that the damage was not the result of an accident as defined by the policy, and thus the damage was not covered.

The differences between this approach and the English law approach are significant, in the U.S. generally speaking, there is no need to consider whether the loss was inevitable or sudden, the exclusion is triggered regardless.

A good example of this comes from *Arkwright–Boston Manufacturers Mutual Insurance Co. v. Wausau Paper Mills Co.*, 818 F.2d 591, 594–95 (7th Cir.1987) where the plaintiff asserted that the damage to a reactor was caused by a sudden acid attack rather than a gradual wearing away, an argument that would be sufficient for the exclusion to not apply were the case being heard under English law. However, in *Arkwright*, the court found the corrosion exclusion applied and the speed at which the corrosion took place was not relevant. With the court finding, under Wisconsin law in that example, that it was not a reasonable interpretation of an all-risk policy to limit the corrosion exclusion to inevitable corrosion. In essence, the court rejected the approach taken by English courts. Other states have come to the same conclusion, e.g. under Colorado law, corrosion in an all-risk policy “unambiguously refers to all corrosion, however brought about.” (*Adams—Arapahoe Joint School District No. 28–J v. Continental Insurance Co.*, 891 F.2d 772, 777 (10th Cir.1989).

Moreover, U.S. courts, include other types of corrosion or cracking, e.g. stress corrosion cracking, to all fall within the corrosion exclusion, “we conclude that stress corrosion cracking is a form of corrosion and falls under the policy’s exclusion for corrosion as a matter of law.” *City Brewing Co., LLC v. Liberty Mut. Fire Ins. Co.*, 2013 IL App (1st) 111996-U, ¶ 51.

Conclusion:

Under English law, corrosion is only excluded under the corrosion exclusion if the corrosion was gradual, naturally occurring or part of gradual deterioration. Where the corrosion is sudden and unexpected, and therefore fortuitous, the loss falls outside the exclusion and would be covered.

In the U.S., the sequential event framework means that generally speaking, any loss involving corrosion will fall within the exclusion, whether the corrosion event was sudden or not.

It should be noted that, depending on the policy wording, both jurisdictions sometimes allow coverage for certain types of ensuing damage caused by corrosion, even if the corrosion itself is excluded.

In summary, while those approaching a corrosion exclusion from an English law standpoint may expect that the corrosion exclusion will not apply if the event was sudden, those across the Atlantic will not be accustomed to such an approach. Careful consideration is needed when approaching corrosion exclusions to ensure that the needs and expectations of the policyholder fit with the type of cover being offered depending on which jurisdiction you are based.

An Unsettling Topic: Third-Party Liability Bad Faith in Alabama

by [Bret Linley](#) (Atlanta Office)

In Alabama, the standard for determining whether an insurer has acted in bad faith in a third-party liability coverage dispute has been an unsettled issue. Two recent decisions from federal courts in Alabama indicate that the issue is unlikely to be settled anytime soon.

In Alabama, the tort of bad faith is a creation of the courts rather than the legislature. The Alabama Supreme Court created the tort of bad faith in the third-party insurance context in *Waters v. American Cas. Co. of Reading, Pa.* , 73 So.2d 524 (Ala. 1953) and in the first-party insurance context in *Chavers v. Nat’l Sec. Fire & Cas. Co.* , 405 So. 2d 1, 6 (Ala. 1981). The standard for first-party bad faith claims is unquestionably whether the carrier had “any reasonably legitimate or arguable reason” to deny coverage (also framed as “the absence of a debatable reason). *Nat’l Sec. Fire & Cas. Co. v. Bowen* , 417 So. 2d 179, 183 (Ala. 1982). The same clarity does not exist in the third-party liability insurance context.

One Alabama Supreme Court opinion suggests that the standard is the same debatable reason test applied to first-party bad faith claims. *Mut. Assur., Inc. v. Schulte* , 970 So. 2d 292, 296 (Ala. 2007). Other Alabama Supreme Court precedent instead suggests a “totality of the circumstances” standard wherein the jury must consider “all the facts and circumstances” of the claim to determine whether the carrier acted in bad faith. *Waters*, 73 So. 2d at 532. One of the major differences between these two standards is how they are applied in the context of a summary judgment motion. Under the debatable reason standard, an insurer may be able to show the existence of a debatable reason as a matter of law, and thus prevail on a motion for summary judgment. In contrast, under the totality standard, disputes often involve issues of fact, making summary judgment more challenging to obtain and thus increasing the possibility that the bad faith claim will be resolved at trial.

Federal courts in recent years have tended to apply the totality approach. See *Franklin v. Nat’l Gen. Assur. Co.* , No. 2:13-CV-103-WKW, 2015 WL 350633, at *10 (M.D. Ala. Jan. 23, 2015). However, in 2024 a Northern District of Alabama court explicitly applied the debatable reason test to a third-party bad faith claim regarding coverage for an award of attorney’s fees against an insured in the underlying claim. *Evanston Ins. Co. v. Brady*, No. 4:23-CV-106-CLM, 2024 WL 917371, at *6 (N.D. Ala. Mar. 4, 2024). Then, earlier this year a Southern District of Alabama court weighed in and applied the totality approach, disagreeing with *Brady*. *Gaudet & Co., Inc. v. ACE Fire Underwriters Ins. Co.* , No. CV 21-00372-JB-MU, 2025 WL 357798, at *5 (S.D. Ala. Jan. 31, 2025). The takeaway from these recent decisions appears to be that the standard for third-party bad faith claims in Alabama will remain unsettled in the future, at least until the Alabama Supreme Court clarifies the issue.

In light of this lack of clarity, carriers adjusting claims in Alabama should be aware that for liability claims, unlike first-party claims in Alabama, the safe harbor of the debatable reason standard may not be available. Instead, the totality approach, which offers less certainty as to what constitutes bad faith and presents a more difficult standard for summary judgment, may apply.





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