# LONESTAR LOWDOWN

Dedicated to Texas First-Party Property Claims

The Zelle Lonestar Lowdown Thursday, April 30, 2026 ISSUE 36

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

In 2025, we focused on Collaboration. We had people reach out with article ideas, their own articles, and ideas for industry events. In 2026, we will continue that effort. We continue to invite our readers to let us know what they are worried about, legal topics that pique their interest, and new advances in the industry – all with a Texas twang.

As always, if you are interested in more information on any of the topics below, please reach out to the author directly. 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

**Todd Tippett's Top Ten Traits for Every First-Party Property Insurance Adjuster**

**News from the Trenches by Steve Badger**

**AI Update: Smart Glasses, Dumb Moves — Witness Caught Receiving Real-Time Coaching in the Courtroom**

**The Prevention Doctrine Has Limits - *Guidry* Proves It**

**TDI's Revised Appraisal Rules —What Changed, Why It Matters, and How to Get Ready**

**Avoid a Clash over Cash: The Perks of Defining Actual Cash Value in a Policy**

**Beyond the Bluebonnets: Defining the Boundaries: How *Stella Property Development* Shapes the Efficient Proximate Cause Doctrine and Ensuing Loss Analysis in Pennsylvania**

## Upcoming Events

You don't want to miss this!

**May 6** – Steven Badger will participate in the Appraiser/Umpire Training Course at the P.L.A.N. Property Loss Appraiser & Umpire Certification Conference in Phoenix, AZ.

**May 7 –** Join Zelle LLP, Nelson Forensics, ATI Restoration, Buchanan Clarke Schlader LLP, Phillips Consulting Group, and Stronghouse for a happy hour on the eve of the National Association of Catastrophe Adjusters (NACA) Regional Hail Workshop in Plano. Invitations are not limited to workshop registrants. RSVP **here**.

**May 8 - 9 –** Zelle is proud to support the National Association of Catastrophe Adjusters (NACA) Inaugural Regional Hail Workshop in Richardson, TX. Alex Masotto will present "Texas Ethics Jeopardy!" on May 8$^{th}$, and Todd Tippett and Adrienne Nelson will present "All Things Appraisal Related - One Question (and Answer) at a Time!" on May 9$^{th}$. Registration and more information can be found here.

NACA REGIONAL HAIL WORKSHOP

# WELCOME RECEPTION

**THURSDAY MAY 7**
**6 PM – 8PM**

**ROOFTOP EVENT SPOT**
1000 14TH ST #400,
PLANO, TX 75074
(ABOVE URBAN RIO)

Sponsored by

NELSON

RSVP to ABannon@zellelaw.com

# NACA REGIONAL HAIL WORKSHOP

Join us for NACA's first-ever Regional Workshop in Richardson, Texas! This will be a focused two-day training built for adjusters who want to sharpen their skills and stay current on hail claims.

**MAY 8 – 9, 2026**

**DRURY PLAZA HOTEL DALLAS RICHARDSON**
WEST CITYLINE DRIVE 165
RICHARDSON, TEXAS

**May 8 –** Zelle LLP will sponsor the Dallas Claims Association Annual DCA Golf Classic Charity Tournament at Indian Creek Golf Club in Carrollton, TX.

**May 12** – Steven Badger will present "Legal Issues in Appraisal - Global Perspective, CO Focus" at the Insurance Appraiser and Umpire Association (IAUA) Appraisal Conference in Denver, CO.

**May 14** – Steven Badger will present at the Appraisal and Umpire Association (AUA) Insurance Appraisal and Claims Resolution Conference in Chicago, IL.

**May 27** – Steven Badger will present “Hot Topics and Emerging Trends in Weather Related Claims – 2026 Update” as part of the NAMIC Claims Webinar Series.

**June 4** – Steven Badger will present at the Texas State Bar Insurance Law Conference in San Antonio, TX.

**June 9-10** – Jessica Port will present "The Ethics of Automation: Avoiding Bad Faith Claims in AI-Driven Claims Handling” at the PLRB 2026 Eastern Regional Adjusters Conference in Hartford, CT with co-presenters Gene Strother (AdjustU) and Robin Roberson (Agentech).

**June 11** – Shannon O'Malley and Laura Bartlow will present "Privilege, Privacy and Peril: A Claims Professional’s Guide to Generative AI" at the Loss Executives Association (LEA) Spring Meeting in Newport, RI.

**June 17 –** Jason Reeves and Hernán Cipriotti will present “Bodily Injury Climate Change Claims” at the 2026 IRMI Energy Risk and Insurance Conference (ERIC), taking place June 15 – 17, 2026, in San Antonio, TX.

**June 18** – Steven Badger will present "The Texas Two-Step: Hot Topics in Claims & Litigation" at the National Association of Public Insurance Adjusters (NAPIA) Annual Meeting in Plano, TX.

---

TODD TIPPETT'S TOP 10

## TRAITS FOR EVERY FIRST-PARTY PROPERTY INSURANCE ADJUSTER:

1. **Empathy** – Adjusters should show compassion to policyholders that have sustained a loss, while at the same time maintaining professionalism and neutrality.

2. **Communicator** – Adjusters must keep the policyholder informed on a regular basis about the claim status and next steps needed.

3. **Detail-Oriented** – An Adjuster must be prepared to fully evaluate the entire claim file and apply the entire policy to determine a fair and equitable payout on the loss.

4. **Technical Knowledge** – A good Adjuster will understand provisions in the applicable policy, be in a position to ask appropriate questions, understand insurance regulations and have knowledge about construction applicable to the loss at issue.

5. **Time Management** – An Adjuster often has to adjust multiple claims in a short period of time, especially during CAT season, which requires a good use of time for each claim.

6. **Negotiator** – An Adjuster must have the ability to appropriately handle disputed issues effectively and fairly when such issues arise between the policyholder and the carrier.

7. **Proactive** – An Adjuster must be proactive – he or she should always address and attempt to resolve disputed issues as soon as possible.

8. **Organized** – An organized claim file is likely a good claim file.

9. **An Open Mind** – An Adjuster should always adjust the loss with a mind toward finding coverage within the provisions of the policy.

10. **Willingness to Learn** – It is important for every Adjuster to keep up with new policy forms, regulations, laws and good claim practices.

---

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.

## News from the Trenches

by Steven Badger

After my presentation at a recent conference, a senior claims manager for a company I do not represent came up to me and asked:

“Mr. Badger, given all the bad things you see from public adjusters, I fail to understand how you can continue to support this so-called profession. I am advocating for the use anti-public adjuster endorsements. I support the Kentucky legislation completely banning PAs.”

I initially informed him that the Kentucky legislation did not “ban” public adjusters, but did significantly restrict their role in the claim process. I then told him the same thing I tell everyone else who asks why I support public adjusters. Two reasons:

First, the good ones can add value in the claims process by helping insureds put together their claims. They can also facilitate a productive dialogue in amicably resolving claims with scope and pricing disputes.

Second, and perhaps even more importantly, without public adjusters, every disputed claim would end up with a policyholder attorney. That’s bad for everyone except the attorney. Instead of a public adjuster taking 10% of the agreed claim measure, the attorney will take 40% or more. This is certain to leave the insured with insufficient money to repair the allegedly damaged property. I’d rather resolve claims with a public adjuster and have a higher confidence that the insured will actually conduct the repairs they allege are necessary.

So, yes, I fully support the role of the properly trained, experienced, and professional public adjuster in the claims process.

Too bad there aren’t that many of those in the public adjusting profession right now.

I saw a long-time Texas public adjuster last week at a conference. He has been a public adjuster since shortly after the Texas licensing statute, Chapter 4102 of the Texas Insurance Code, was enacted in 2003. I realized in all that time I have only had one of his claims in our office. I asked him why that is. His answer was quite clear: “I use Xactimate the way it is supposed to be used. I don’t exaggerate my scope of damage. And I don’t take hail claims with questionable damage.” I then asked him what percentage of his claims end up in litigation. He laughed and said: “Virtually none.”

Wow. Unlike him, there are some public adjusters whose claims show up in my office every month. Sometimes every week. Perhaps if I asked them why so many of their claims end up in litigation they would say: “I manipulate Xactimate to get high numbers. I exaggerate my scope of damage. And I take hail claims with questionable damage.”

These public adjusters are ruining the public adjusting “profession”.

But there is hope. Finally, the reputable segment of the public adjusting profession is starting to pay attention. They know their profession has an integrity and reputation problem. They know there is a growing sentiment amongst insurance company executives and their legislature friends to restrict or entirely end their role in the claims process. So, these reputable public adjusters have finally agreed to work with me in drafting proposed revisions to Chapter 4102 making it harder to become eligible for a license, increasing education/training requirements, and strengthening conduct and ethical standards. The objective is to agree on proposed language and then find legislators who will carry a bill setting forth these changes in the 2027 Texas legislative session.

Watch for a first draft of these revisions in the next couple months.

# AI Update

## Smart Glasses, Dumb Moves — Witness Caught Receiving Real-Time Coaching in the Courtroom

by Jennifer Gibbs

In a case that reads more like a courtroom comedy than a High Court ruling, a London judge recently found that a witness was being coached on his answers in real time through a pair of smart glasses connected to his mobile phone — and when the scheme fell apart, he blamed it on ChatGPT.

The incident came to light in January 2026 during an insolvency proceeding before ICC Judge Raquel Agnello KC. Laimonas Jakstys, a Lithuanian businessman, had brought a claim seeking to be reinstated as a director of a property development company and to have the company's register rectified. Things went off the rails almost immediately once Jakstys took the witness stand.

**What Happened**

Jakstys testified through an interpreter, and from the outset of cross-examination, he paused noticeably before answering questions. Defense counsel noticed that she could hear electronic interference coming from around the witness and asked the judge to have Jakstys remove his glasses, as she was aware that smart glasses existed. The interpreter, seated beside Jakstys in the witness box, confirmed she could hear the interference too.

Sure enough, Jakstys was wearing smart glasses. The judge directed him to remove them, but the show wasn't over. Moments later, while the interpreter was still translating a question, Jakstys's mobile phone began broadcasting a voice out loud — someone was clearly speaking to him through the phone, which had been connected to the glasses. The judge ordered both the glasses and the phone placed in the hands of Jakstys's solicitor.

**The Cover Story**

Jakstys denied that he had been using the smart glasses to receive answers and denied they were connected to his phone. When asked about the voice heard from his phone, he offered an explanation that the judge described as entirely lacking credibility: he said he thought it was ChatGPT.

The call log on Jakstys's phone told a different story. It showed multiple calls to a contact saved as "abra kadabra," including one placed just minutes before Jakstys entered the witness box. When pressed on the identity of "abra kadabra," Jakstys claimed it was a taxi driver he was calling to arrange a ride home from court. When asked why so many calls were made with the same message, he responded — as he did frequently throughout his testimony — that he could not remember.

In a further twist, Jakstys reported two days after his initial testimony that he had been robbed of both his mobile phones and his passport. No police report or witness statement about the alleged robbery was ever produced.

**The Ruling**

Judge Agnello found that the smart glasses were "clearly connected" to Jakstys's mobile phone during cross-examination and that a call had been active during his testimony until the phone was physically confiscated. She accepted that Jakstys was "being assisted or coached in his replies to questions put to him during cross examination." She also noted that once the glasses were removed, Jakstys "hesitated quite a bit" before providing answers and frequently asked for questions to be repeated — making it "clear to me he simply did not know what his reply should be."

The judge ultimately rejected Jakstys's evidence "in its entirety," finding him "untruthful" about his use of the smart glasses and "unreliable" in his testimony overall. She further found that his witness statements had been "clearly prepared by others" and that, despite asserting he could not read English, he had signed statements of truth on English-language documents. The court entered judgment for the defendants with an indemnity costs order.

**Why This Matters**

This case may seem like an outlier, but practitioners on both sides of the pond should take note. As defense counsel Sarah Walker told Legal Futures, "This was a career first for me but, with technological advances, may well be something that litigators have to deal with much more frequently in the coming years."

That concern is well founded. Barrister Saara Idelbi of 39 Essex Chambers observed on LinkedIn: "This time it was a human coach. Next time it will be AI." She noted that AI wearables — smart glasses, watches, necklaces, and lapel pins — are a major focus for several

frontier AI companies and warned that an AI tool delivering text through a screen or audio through an earbud might not produce the same telltale interference that gave Jakstys away.

For litigators, the takeaway is clear: technology-assisted witness coaching is no longer hypothetical. Courts and counsel alike will need to develop protocols and remain vigilant as to the use of smart devices in the courtroom. These concerns are also relevant to insurers seeking to take examinations under oath, whether through virtual platforms or in person. Whatever the solution, what is clear is the era of invisible earpieces and smart glasses as cheating tools has officially begun.

## The Prevention Doctrine Has Limits - *Guidry* Proves It

by Tom Papa

Most property insurance policies condition the payment of replacement cost value ("RCV") on the insured actually repairing or replacing the damaged property. When a policyholder fails to complete repairs, recovery is typically limited to actual cash value ("ACV"). That's the deal. It's what the policy says. But policyholders have increasingly turned to the "Doctrine of Prevention" to try to sidestep this requirement, arguing that the insurer's own failure to pay caused the insured's inability to repair and that the insured should therefore recover full RCV despite never completing the work – or at a minimum getting additional time than contemplated by the policy.

On its face, it does not seem to be a wholly unreasonable argument. But upon closer review, it ignores the fact that the policy contemplates that the insurer be out of pocket for repair costs *before* recovery of replacement cost and, therefore, the insurer's actions or inactions should not affect the insured's ability to recover RCV. A growing body of case law, particularly from federal courts in Texas and the Fifth Circuit, confirms this and gives insurers guideposts on how to avoid these prevention arguments. *See e.g. Devonshire Real Est. & Asset Mgmt., LP v. Am. Ins. Co.*, No. 3:12-CV-2199-B, 2014 WL 4796967, at *7 (N.D. Tex. Sept. 26, 2014); *Kahlig Enterprises, Inc. v. Affiliated FM Ins. Co.*, No. 23-50144, 2024 WL 1554067, at *2 (5th Cir. Apr. 10, 2024).

A recent Hurricane Ida decision out of the Middle District of Louisiana reinforces these limits and is useful for insurers because it shows that replacement cost claims are often won or lost not on abstract legal principles, but on the facts, particularly policyholders' testimony.

In *Guidry v. State Farm Fire & Cas. Co.*, No. 3:23-cv-01286 (M.D. La. Apr. 9, 2026), the court granted the insurer's motion in limine, limiting the policyholder's recovery to ACV because she did not complete repairs within the two-year timeframe required by the policy. The policyholder argued that she should not be required to fund repairs out of pocket before the insurer paid what she believed was owed. The court acknowledged that the doctrine exists in Louisiana, but it zeroed in on a critical factual question: did the insured have the financial means to complete the repairs independent of the insurance proceeds? The insured admitted that she had the financial ability to make repairs but chose not to proceed until she was assured of full payment. That testimony proved fatal. The court concluded that her failure to repair was not caused by any inability stemming from the insurer's conduct, but by her own decision to wait. Although this decision arises out of Louisiana, its reasoning is fully consistent with the framework developed by courts in Texas and the Fifth Circuit.

### What Must the Insured Prove?

As a general rule, "if a contract expressly conditions the duty to perform upon the occurrence of a specified event, the duty to perform does not arise until that condition occurs." *Mendoza v. COMSAT Corp.*, 201 F.3d 626, 631 (5th Cir. 2000). The Doctrine of Prevention is an equitable exception to this rule. It holds that when a promisor wrongfully prevents a condition from occurring, that condition may be excused. *Id.* In the property insurance context, policyholders invoke this doctrine to argue that the insurer's refusal or failure to pay ACV or other amounts owed under the policy made it financially impossible for the insured to undertake the repairs necessary to trigger the replacement cost provision. The argument, in essence, is that it would be inequitable to enforce the repair-or-replace condition when the insurer's own breach is the reason the condition was not met.

Importantly, however, "no Texas court has employed the doctrine of prevention to vitiate an insured's contractual obligation to repair or replace damaged property before claiming payment for replacement costs." *Devonshire*, 2014 WL 4796967, at *7. Courts applying the Fifth Circuit's framework in *Mendoza* have identified three elements the insured must satisfy: (1) the insurer engaged in wrongful conduct rising to the level of bad faith; (2) the insured was actually prevented from meeting the policy's conditions; and (3) the insured can satisfy equitable principles, including the clean hands doctrine. If the insured had the financial resources to complete the work regardless of the insurer's payment, the causal link is broken, and the prevention doctrine does not apply.

### *Guidry* and the Financial Ability Question

The "actual prevention" element is where the insurer prevailed in *Guidry*. This was not a case where the insurer's underpayment prevented performance. It was a case in which the policyholder could have acted but chose not to. The court found that the insured's failure to repair was driven by her own decision to wait for full payment, not by any financial inability caused by the insurer's conduct. Under those facts, the policy's repair requirement was enforceable, and the claim for replacement cost value failed. The condition precedent to RCV, actual repair or replacement, simply was not met, and the doctrine offered no relief.

This reasoning is consistent with how courts in the Fifth Circuit have approached the issue. As one court astutely reasoned, a time limit to make repairs does not depend on whether or when the insurer makes payment because the policy requires the insured to make the repairs before being paid: the insurer "was not obligated to pay [the insured] upfront and so [the insurer's] desisting cannot have made it beyond the insured's control to replace the property." *Kahlig Auto Group v. Affiliated FM Ins. Co.*, No. 5:19-CV-

1315-DAE, 2021 WL 5227093, at *6 (W.D. Tex. May 20, 2021) (quoting *Double Diamond Delaware, Inc. v. Homeland Ins. Co. of New York*, Civ. A. No. 3:17-cv-1403-X, Mem. Op. & Order, Dkt. # 105 at 10 (N.D. Tex. July 20, 2020)).

The Fifth Circuit affirmed this approach in *Kahlig Enterprises, Inc. v. Affiliated FM Ins. Co.*, No. 23-50144, 2024 WL 1554067, at *2 (5th Cir. Apr. 10, 2024), summarily rejecting the insured's contention that any failure to timely repair is excused because [the insurer] was the source of delay. Courts have also recognized that when the insurer has paid the ACV during the course of the adjustment, the insured cannot credibly claim to have been prevented from repairing. Where the insured has the means to repair but simply chooses not to, whether out of preference, indifference, or a strategic decision to pursue litigation, the doctrine does not rescue the claim.

**Conclusion**

The Doctrine of Prevention is not the trump card policyholder's counsel would like it to be. *Mendoza*, *Devonshire*, *Kahlig*, and now *Guidry* all confirm that insureds face a high bar: they must show wrongful conduct by the insurer, actual prevention of performance, and equitable clean hands. Insureds who had the financial ability to complete repairs, or whose own conduct contributed to delays, cannot clear it. Ask the right questions early, build the right record, and let the insured's own testimony determine whether they were actually prevented from undertaking repairs.

## TDI's Revised Appraisal Rules — What Changed, Why It Matters, and How to Get Ready

by Austin Taylor

Last year, the Texas Legislature passed Senate Bill 458 (89th Legislature, 2025), which added Chapter 1813 to the Texas Insurance Code. SB 458 requires certain insurers writing personal automobile or residential property insurance to include an appraisal provision in their policies and directs the Texas Department of Insurance ("TDI") to adopt rules necessary to implement the chapter, including rules that mandate appraisal, establish the period in which appraisal must be completed, and address the qualifications and selection of appraisers and umpires. TDI posted an informal first draft of those rules on September 22, 2025, and, candidly, it needed some work.

Now, after a seven-month wait, TDI has released a revised set of proposed rules, and they're a marked improvement over the first iteration. TDI clearly listened to stakeholder input this round, and special credit is due to David Muckerheide and the TDI team for genuinely engaging with the comments and incorporating thoughtful fixes that will make the process fairer and faster. Because these proposed rules will define how Texas property and auto appraisals will operate moving forward, they matter to every carrier and policyholder advocate who touches first-party claims in this state. Below are some of the highlights of the proposed changes that will have the most impact on how first-party property appraisals have historically worked in Texas.

- **No more "mutual consent" requirement** — Either party can now unilaterally invoke appraisal without needing the other side to agree. Thus, any policy provision requiring the consent of both parties to proceed with appraisal is presumably now invalid. The proposal also does away with any requirement that the parties demonstrate an "impasse" before demanding appraisal; a live dispute over the amount of loss is enough, even if the parties are still talking. As a practical matter, that means policyholders and carriers alike can move to compel appraisal earlier in the process without waiting for negotiations to formally break down, and neither side can stall by withholding consent. But, of course, the policy requirement that there be a "dispute" as to the amount of loss still exists. Finally, the rule still permits an insurer to require proof of loss consistent with Insurance Code Chapter 542, Subchapter B, so this isn't a free pass to skip the claims-handling process.

- **240-day completion deadline —** For residential property claims, appraisers will have 120 days to try to reach agreement on the amount of loss, and if an umpire is needed, the appraisal award must be issued no later than 240 days from the demand. The rules also add real teeth: if the 240-day mark passes without an award, the umpire's engagement is automatically terminated and the appraisers must choose a new umpire within 15 days—a mechanism that should give everyone an incentive to stay on schedule. In addition, each party must hire an appraiser and exchange names and contact information in writing within 20 days of the demand, preventing the early-stage foot-dragging that can frequently bog down the appraisal process. And for those complex losses where 240 days truly isn't enough, the parties can modify any deadline by written agreement after the appraisal process notice is provided, preserving flexibility without undermining the default structure.

- **Broadened qualifications for appraisers and umpires —** The proposal sets clear minimum qualifications: competence to evaluate the type of loss in dispute, independence from the parties, and disinterest in the outcome. For residential property appraisals involving loss to a dwelling, participants must also hold specific credentials. Specifically, they must be: (1) a licensed adjuster or public adjuster with residential estimating experience; (2) an engineer or architect with experience in residential construction, repair, or damage investigation; or (3) an individual with occupational experience or training in the relevant type of construction, repair, or loss estimation. That last category is important as it addresses one of the concerns we raised with the initial draft – ensuring that only qualified building consultants can serve as appraisers. It is also important to remember that these are minimum qualifications. Policies may have additional or more specific requirements so long as they do not conflict with these minimum qualifications.

- **Unilateral umpire appointments prohibited —** This is a big deal, and long overdue. No more surprise, one-sided umpire appointments. Now the requesting party must give the other side at least 10 days' written notice of their intent to seek an umpire appointment. The requesting party must also provide the other side with a copy of the actual request before or when it is submitted. This new two-layer safeguard should put an end to the scenario where one party wakes up to discover an umpire has already been appointed without their knowledge or input. The proposal also acknowledges the current practice by some insurers of having an alternative to judicial umpire appointments. Insurers can continue to offer appointment by an independent vendor—provided they list at least two vendors and let the policyholder choose, or allow only the policyholder to invoke the vendor option. That design ensures the policyholder retains meaningful choice in the selection process regardless of the method used. For many who have seen the umpire selection process abused, these guardrails are a welcome improvement.

- **"Use It or Lose It" rule** — For residential property claims, a party must now demand appraisal in writing within one year of the insurer's acceptance or rejection of the claim. If litigation starts, the respondent (usually, but not always, the carrier) gets a 30-day window to demand appraisal even if the one-year period has run, thus preserving appraisal as an off-ramp from costly discovery fights when the dispute is really about dollars rather than liability. The current draft triggers the 30-day window from the lawsuit filing date, but we would suggest changing this deadline to run from the answer date instead. Obviously, this prevents scheming policyholder attorneys from filing lawsuits and then waiting 30 days to effectuate service to prevent the insurer from invoking appraisal.

- TDI's open comment period is underway, with written comments due by 5:00 p.m. CT on June 8, 2026, and a public hearing set for June 2, 2026—both in person and virtual.

These changes are currently slated to apply to policies issued or renewed on September 1, 2026. Prior to this deadline, carriers will need to file amended policy forms consistent with these new guidelines with TDI for review and approval.

We'll be tracking developments closely and will provide additional updates and guidance as we progress through the adoption period.

---

## Avoid a Clash over Cash: The Perks of Defining Actual Cash Value in a Policy

by Nicholas Smetzer

Picture if you will a quiet Texas home. It's unremarkable, cozy, and most importantly for the purposes of this article, insured. All is well at this humble domicile until disaster strikes in one of the many forms that the Texas climate can unleash. The culprit could be wind, water, or hail; either way, the result is the same: there is damage to the roof, and it must be repaired.

The insured reports the damage to the insurer, who then sends an adjuster to measure the claim. The investigation goes smoothly at first. Initial payments, as they often are, are made on an actual cash value (ACV) basis, calculated by the insurer as replacement cost minus depreciation.

All is right in the world until the insured consults with a policyholder attorney, who peers into the insurer's ACV calculation. It's there that the policyholder attorney finds what he was looking for. He notices that, in addition to applying depreciation to shingles, nails, and flashing, the insurer also depreciated the labor portion of the installation. The policyholder attorney remembers hearing something at a conference about "depreciation of labor class actions".

"This wasn't mentioned in the policy," argues the attorney. "Besides, can labor even depreciate? A roofer's hard work doesn't rust like a nail." Seeing dollar signs, the policyholder attorney initiates litigation.

The above scenario is not an introduction to a Twilight Zone episode, nor is it a scary campfire story to tell at insurance conferences. Rather, these are the facts of *Sims v. Allstate Fire & Casualty Ins. Co.*, decided in the Western District of Texas in 2024. In this case, the Court ultimately sided with the cadre of policyholder attorneys raising this argument across the country, ruling that when the policy is silent on how ACV is calculated or on how depreciation is applied, there exists an ambiguity that should be construed in the insured's favor. Importantly, this decision did not turn on whether depreciating labor was inherently improper, or whether the method of calculating ACV was mathematically sound. Rather, it focused on the definitional clarity of the term "actual cash value" within the insurance policy.

Surprisingly, *Sims* completely ignored prior Texas case law having considered the issue. The Northern District Court of Texas in *Tolar v. Allstate Texas Lloyd's Co.*, evaluated a class action lawsuit over determining how depreciation affected an ACV payment. Here, when a policyholder sued its insurer for depreciating general contractor overhead and profit (GCOP) and sales tax, the court identified that these were components more appropriately associated with replacing the property, not representing the property's current value. In fact, the court noted plainly: "[b]ecause GCOP, sales tax, repair costs, and property value together represent the total replacement cost value, it follows naturally that GCOP, sales tax, repair costs, and property value ought to be depreciated together to reach the ACV payment."

*Greenspoint Investors, Ltd. v. Travelers Lloyds Insurance Co.* similarly dealt with determining ACV where the policy provided no definition of the term. In *Greenspoint*, after an insured office building had suffered damage from Hurricane Ike, the policyholder created a new company to complete repairs on the building. The insurer, knowing about the close connection between the building and the newly formed repair company, questioned the reliability of the payment records it received and requested information about

the actual costs of repairing the property. Rather than provide this information, the insured argued at trial that the proper measure of ACV, when undefined by the policy, should be the repair estimates. The insurer's argument that ACV can be measured by extrinsic valuation evidence when undefined in the policy ultimately prevailed.

But for some unknown reason, the *Sims* court chose to ignore *Tolar* and *Greenspoint*, relying instead on case law from other jurisdictions. And now it's unclear whether labor can be depreciated in Texas first-party property damage claims.

So what should a Texas insurance company do now?

The answer is simple. Zelle recommends revising policies to include simple definitions of ACV and depreciation to eliminate the so-called ambiguities that have fueled the recent increase in policyholder attorney driven litigation. Here is Zelle's recommended language:

*DEFINITIONS OF ACTUAL CASH VALUE / DEPRECIATION*

> *The following is added to any provision using the terms "actual cash value" and "depreciation":*
>
> *Actual cash value means the lesser of:*
>
> *(1) The estimated cost to repair the damaged portion of property with like kind and quality materials as measured at the time and place of loss, less pre-loss depreciation; or*
>
> *(2) The estimated cost to replace the damaged portion of property with like kind and quality materials as measured at the time and place of loss, less pre-loss depreciation.*
>
> *Depreciation means a decrease in the fair market value of property over a period of time as a result of factors including, but not limited to, age, condition, wear and tear, deterioration, or economic obsolescence. The application of depreciation as used to calculate the actual cash value of property shall include all components of the estimated cost to repair or replace the damaged portion of property, including but not limited to labor, materials, overhead, profit, and any applicable tax.*

Some Texas insurers might believe that this language will make their policy forms less viable on the market. But this language is not wholly unique or untested. Many carriers are already including this type of language in their policies, including carriers that offer personal lines coverage, which requires acceptance by the Texas Department of Insurance. For example, one personal lines carrier defines ACV in its policy as follows:

> 1. "***actual cash value***" *means the value of the damaged part of the property at the time of loss, calculated as the estimated cost to repair or replace such property less a deduction to account for pre-loss depreciation. For this calculation, all components of this estimated cost including, but not limited to:*
>
> *a. materials, including any tax;*
> *b. labor, including any tax; and*
> *c. overhead and profit;*
>
> *are subject to depreciation.*
>
> *The depreciation deduction may include such considerations as:*
>
> *a. age;*
> *b. condition;*
> *c. reduction in useful life;*
> *d. obsolescence; and*
> *e. any pre-loss damage including wear, tear, or deterioration;*
> *of the damaged part of the property.*

These provisions address the valuation disputes fueling recent litigation on how to measure ACV. By deliberately defining both actual cash value and depreciation (including the depreciation of labor), Zelle's recommended provision and the personal lines provision both eliminate any argument as to ambiguity regarding labor, overhead and profit, and taxes, which are all issues that frequently become points of conflict when policies are silent.

More importantly, this clarity benefits both insurers and insureds. Insurers gain predictability and reduce exposure to class-wide challenges premised on undefined terms, while insureds receive transparent, up-front notice of how losses will be valued. Rather than inviting the uncertainty and risk that accompanies forcing courts or juries to reconstruct ACV methodologies after a loss, the policy itself supplies the governing standard.

While some object to the application of depreciation to labor as an attempt to devalue a payout or underpay workers, it is important to recognize that labor comes into play in the installation of a completed roofing system, not during the preliminary valuation of the pre-repair property. Crucially, "actual cash value" is a representation of the market value of the property immediately before the loss. As such, the depreciation of a labor item in a calculation merely reflects the fact that an older roof is worth less than a newer one, even though both at one point required work to be installed. By including these kinds of depreciation terms within an ACV definition within a policy, insurers may better discourage opportunistic behavior and prevent scenarios in which insureds receive near-replacement level ACV payments on roofs without ever undertaking repairs.

Finally, and perhaps most importantly, it is noteworthy that under standard replacement cost coverage policies, this issue is actually a non-issue. The insured will recover the depreciation, whether labor was depreciated or not, when the work is performed and the replacement cost has been incurred. This raises an interesting question: do insureds actually even have any damages in these class action lawsuits? That academic discussion is for another day.

So what's the lowdown? Clearly defined ACV language functions not only as a litigation-avoidance tool, but as a practical mechanism for reinforcing the fundamental principle that insurance is intended to restore the insured to the same position as they were in before their loss, rather than generating a windfall. Setting and reinforcing this expectation for both sides of the policy, insurer and insured, can serve to improve the claims handling process by increasing transparency and consistency. Texas insurers would be well-served in ensuring that their policies define actual cash value and depreciation.

# BEYOND THE BLUEBONNETS

## Defining the Boundaries: How *Stella Property Development* Shapes the Efficient Proximate Cause Doctrine and Ensuing Loss Analysis in Pennsylvania

by Tyler Murphy

**I. Introduction**

Pennsylvania insurance law has long lacked definitive guidance on two critical doctrines that govern coverage disputes in property insurance cases: the Efficient Proximate Cause Doctrine and the ensuing loss clause. In *Stella Property Development and Event Production, LLC v. Auto-Owners Insurance Company*, No. 3:24-cv-60, 2026 WL 221489 (W.D. Pa. Jan. 28, 2026), the United States District Court for the Western District of Pennsylvania issued a thorough opinion that predicts how the Pennsylvania Supreme Court would define the contours of both doctrines. The court's analysis represents the most recent authority to address the application of the Efficient Proximate Cause Doctrine and ensuing loss clauses under Pennsylvania law, with the opinion issuing on January 28, 2026. This article traces the historical development of these doctrines in the Commonwealth, analyzes the court's holdings, and examines the practical effects of the decision on claims investigations and coverage litigation across Pennsylvania.

**II. History of the Efficient Proximate Cause Doctrine in Pennsylvania**

The Pennsylvania Supreme Court has never definitively ruled on the precise parameters of how courts should apply the Efficient Proximate Cause Doctrine ("EPC") in property insurance disputes. The seminal case on the doctrine in the Commonwealth remains *Trexler Lumber Co. v. Allemannia Fire Ins. Co. of Pittsburgh*, 136 A. 856 (Pa. 1927), which involved a windstorm insurance policy covering the insured's lumber sheds. In *Trexler*, the policy covered windstorm damage but expressly excluded loss caused by snowstorms, and the central question at trial focused on whether the collapse of the insured's sheds resulted from a windstorm or from snow pressure on the roofs. *See id.* at 857-858. The Court affirmed a verdict for the insured and approved of a jury charge requiring the insured to prove that the windstorm was the "dominant and efficient cause" of the collapse, while rejecting the insurer's argument that any degree of snow contribution would bar recovery. *Id.* at 858.

The *Trexler* Court grounded its holding in the principle that an insured peril need not be the sole cause of a loss to trigger coverage. The Court explained that even if snow pressure contributed to the collapse of the lumber sheds, "that would not defeat plaintiff's right of action," because "[w]here a windstorm, covered by the policy, was the efficient cause of the loss, the fact that other outside causes contributed thereto will not relieve the insurer." *Id.* The Court drew a critical distinction between causes that are "dominant" and "efficient" and those that are merely "remote" or "incidental," establishing a framework under which the insured peril must serve as the predominating cause of the loss. *Id.* at 857. This foundational principle has guided Pennsylvania courts for nearly a century, yet the Supreme Court has not revisited or refined the doctrine's application in the modern property insurance context.

**III. History of Interpretation of Ensuing Loss Clauses in Pennsylvania**

The most substantive Pennsylvania case law interpreting ensuing loss clauses in insurance policies comes from a non-precedential opinion of the Pennsylvania Superior Court in *Ridgewood Grp., LLC v. Millers Cap. Ins. Co.*, No. 1138 EDA 2016, 2017 WL 781620 (Pa. Super. Ct. Feb. 28, 2017). In *Ridgewood*, the Superior Court confronted an "all-risks" policy that excluded losses caused by negligent maintenance but contained an exception providing that if the excluded cause "results in a Covered Cause of Loss," the insurer would pay for the resulting damage. *Id.* at *3-4. The court adopted the Sixth Circuit's interpretation of ensuing loss clauses from *TMW Enterprises, Inc. v. Federal Insurance Company*, 619 F.3d 574 (6th Cir. 2010), which focused on foreseeability as the defining principle. *Ridgewood*, 2017 WL 781620, at *5. The Superior Court held that damages which "naturally and foreseeably arise from the excluded cause are excluded," while non-foreseeable losses qualify for the ensuing loss exception and remain

covered under the policy. *Id.* Applying this framework, the court concluded that water infiltration damage arising from a rotted roof and clogged gutter system constituted a "natural and foreseeable loss" and affirmed summary judgment for the insurer. *Id.*

Two Pennsylvania federal district courts have applied the ensuing loss framework outlined in *Ridgewood*. *See Griggs Rd., L.P. v. Selective Way Ins. Co. of Am.*, 368 F. Supp. 3d 799 (M.D. Pa. 2019); *Burgunder v. United Specialty Ins. Co.*, No. CV 17-1295, 2018 WL 2184479 (W.D. Pa. May 11, 2018). The *Stella* decision now stands as the third federal court to articulate this foreseeability test, reinforcing a growing consensus across the Commonwealth that foreseeability controls the ensuing loss analysis under Pennsylvania law.

**IV. *Stella Property Development and Event Production, LLC v. Auto-Owners Insurance Company***

The dispute in *Stella* arose from a claim for roof damage to the Casimir Cultural Center in Johnstown, Pennsylvania, a building originally constructed in 1902. *Stella*, 2026 WL 221489, at *1. On June 21, 2021, a windstorm with estimated maximum gusts of 65 mph struck the area, and the policyholder's inspector found extensive wind damage on nearly all facets of the roof while noting that the existing organic shingles were in "very poor condition." *Id.* at *2. The insurer, Auto-Owners, retained its own inspectors and an engineer, who concluded that long-term deterioration, not a single wind event, caused the loss, and denied the claim under the policy's wear-and-tear and inadequate maintenance exclusions. *Id.* at *2–3, 5.

The court first addressed the EPC doctrine, observing that it needed to predict how the Pennsylvania Supreme Court would rule given the absence of definitive guidance. *Id.* at *5–6. Distinguishing the EPC doctrine from the concurrent causation doctrine, the court noted that the EPC focuses on the predominant cause of a loss rather than permitting coverage whenever a covered peril serves as any concurrent proximate cause. *Id.* at *6. Relying on *Trexler*, the court concluded that "the Pennsylvania Supreme Court would apply the efficient proximate cause doctrine in that predominant-cause sense," and held that Stella bore the burden of proving the windstorm was the "dominant and efficient" cause rather than a mere remote or incidental cause. *Id.* at *6–7. Because competing expert evidence existed on both sides, the court determined the question belonged to the factfinder. *Id.* at *7.

The court then turned to the ensuing loss clauses in both the wear-and-tear and maintenance exclusions. *Id.* at *7–8. Stella argued that the clauses restored coverage whenever an excluded condition and a covered peril combined to produce a single loss, but the court rejected this reading, agreeing with Auto-Owners that "the ensuing loss clause applies when an excluded condition results in the peril itself, and the Policy then pays for 'the loss or damage caused by that' ensuing peril." *Id.* at *7–8. Because wear and tear, or inadequate maintenance, of the roof did not "result in" a windstorm but merely made the roof more susceptible to wind damage, the ensuing loss clause did not reinstate coverage as a matter of law. *Id.* at *8–10.

Although the court did not expressly invoke the foreseeability test in its primary ensuing loss analysis, the framework it applied achieves the same result. In *Ridgewood*, the Superior Court held that ensuing loss clauses restore coverage only for losses that do not "naturally and foreseeably arise from the excluded cause." *Ridgewood*, 2017 WL 781620, at *5. The *Stella* court's requirement that the excluded condition must actually "result in" the covered peril, rather than merely increase susceptibility to it, draws the same analytical line. *Stella*, 2026 WL 221489, at *8, 10. Under both approaches, damage flowing as a natural and foreseeable consequence of the excluded cause remains excluded, and coverage returns only when an independent covered peril produces separate, unforeseeable damage. The court acknowledged this alignment in footnote 21, citing *Ridgewood* and observing that "foreseeability is the lynchpin" of the ensuing loss analysis, while noting that even under Stella's broader reading, unresolved factual disputes about the roof's condition and the foreseeability of the claimed damage precluded summary judgment. *Id.* at *10 n.21.

**V. Comment**

The *Stella* court's adoption of a "predominant cause" framework for the EPC doctrine carries significant practical consequences across Pennsylvania. Claim investigators should focus their efforts on identifying the single most dominant cause of a loss, elevating the role of experts and expert testimony in claims investigations and coverage litigation alike. If a court or jury finds that the predominant cause is a covered peril, the insurer must pay the claim regardless of contributions from excluded causes, but if the predominant cause is an excluded peril, the policyholder loses coverage through the exclusion and may turn to the ensuing loss clause as a narrow path to restore it—but only if the specific exclusion that defeats coverage actually contains an ensuing loss provision. Not all policy exclusions include such a provision, and the absence of one forecloses that path entirely.

Under the court's reading, ensuing loss clauses operate only when the excluded condition results in a distinct covered peril that causes separate loss or damage, and foreseeability remains the "lynchpin" of that analysis; losses which naturally and foreseeably arise from the excluded cause remain excluded. As the third Pennsylvania federal court to cite to the foreseeability framework from the non-precedential *Ridgewood* opinion, the *Stella* decision contributes to a growing predictability in Pennsylvania coverage law and provides a consistent analytical framework for evaluating these disputes.

For more information on any of the topics covered in this issue, or for any questions in general, feel free to reach out to any of our attorneys. Visit our website for contact information for all Zelle attorneys at zellelaw.com/attorneys.

**Visit our Website**

---

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

**Contact Us!**

---

Follow Zelle LLP on LinkedIn!

## Thank you for reading this issue of The Zelle Lonestar Lowdown!

Visit our website to view all previous issues of The Zelle Lonestar Lowdown!

**The Lonestar Lowdown All Issues**

Join The Zelle Lonestar Lowdown mailing list!

**Sign me up!**

*The opinions expressed are those of the authors and do not necessarily reflect the views of the firm or its clients. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

**If you would like to be taken off this distribution list without unsubscribing from all Zelle emails and updates, please click here.**

Zelle LLP | 901 Main Street Suite 4000 | Dallas, TX 75202 US

Unsubscribe | Update Profile | Constant Contact Data Notice