ZELLE LLP LONESTAR LOWDOWN

Dedicated to Texas First-Party Property Claims

The Zelle Lonestar Lowdown | Tuesday, June 30, 2026 | ISSUE 37

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

Upcoming Events

You don't want to miss this!

July 9 - Steven Badger will appear as a guest speaker on the Adjuster Hour podcast hosted by Natalie Arroyave.

July 14 – Bret Morace and Nabila Rahim will present "Navigating the Storm: A Guide to Wind & Flood Insurance in Florida" at the National Association of Catastrophe Adjusters (NACA) Regional Flood & Hurricane Workshop in Orlando, FL

July 20 – Steven Badger will present at the P.L.A.N. Property Loss Appraiser & Umpire Certification Conference in Dallas, TX.

August 4 – Steven Badger will present at the American Ag Conference in Schaumburg, Illinois

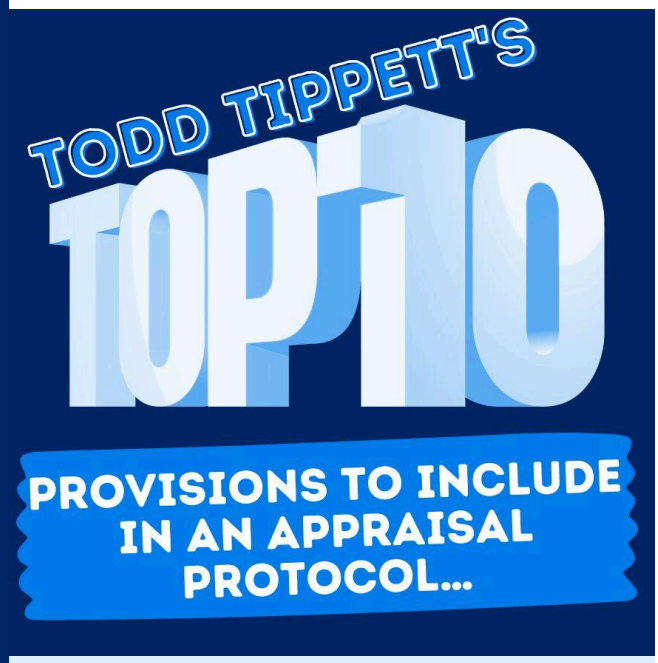
August 11 – Steven Badger will present "Battle of Merlin vs Badger" with William "Chip" Merlin at the IAUA Appraisal Conference in Ft. Lauderdale, FL.

August 19 – Jennifer Gibbs will present “AI in Claims: Risks and Rewards” during a webinar hosted by the Windstorm Insurance Network.

September 15 – 16 – Jessica Port will present "The Ethics of Automation: Avoiding Bad Faith Claims in AI-Driven Claims Handling" for the 2026 PLRB Regional Innovation Summit in Dallas, TX.

September 18 – Jennifer Gibbs will present “Implications of AI in the Insurance Industry, Risks, Regulations, and Future Trends” at the Oklahoma Claims Association (OCA) Fall Conference in Midwest City, OK.

September 27 – 30 – Steven Badger, Lindsey Davis, and Jessica Port will present at the NAMIC 131st Annual Convention in Denver, CO.



1. **Deadlines.** A typical appraisal provision does not require the completion of an appraisal within a certain amount of time. An Appraisal Protocol should include reasonable deadlines for the appraisers to complete inspections, estimates, meetings with the umpire (if necessary) and the completion of an award.

2. **The Peril at issue.** If the claim involves a wind and hail loss, the appraisal panel should be directed to appraise damage related to wind and hail, not unrelated plumbing leaks.

3. **Date of Loss.** The appraisal panel should be aware that the dispute over the amount of loss is from a specific date of loss. The panel should not consider damage from other dates of loss, if possible.

4. **Scope of the Appraisal.** If the claim involves roof damage only, the appraisal should be limited to roof damage only. If the insured has not previously made a contents or business interruption claim, those components should not be included in the appraisal. This provision sets forth what the panel should appraise.

5. **Coverage issues for Appraisal.** In most jurisdictions, pure coverage and liability issues should not be appraised. In some instances, however, the parties may agree to have the panel appraise a coverage issue. In such instances, the parameters of that agreement should be articulated in an Appraisal Protocol.

6. **The Name of each party’s Appraiser.**

News from the Trenches

by Steven Badger

When I first got into the hail litigation world almost 15 years ago, a Texas policyholder attorney told me: “*Badger, I make good money whenever a hurricane hits Texas. But hail claims are the wave of the future. They are the gift that keeps on giving.*”

True story. He said exactly that.

And that bothered me. So I committed to include in my work efforts to not only aggressively defend my clients in their Texas hail claims, but also to find solutions to the issues giving rise to the disputes in hail claims. To accomplish this, I started drafting revised policy forms to address common disputes, worked on legislative reforms, and became vocal in educating the industry on how to address abusive conduct in the claims process.

Well, I must be crappy at my job. As here we are fifteen years later, as busy as ever.

Actually, with that said, we have made some progress in certain limited areas. Some really bad fraud and abuse schemes have been rooted out and eliminated. We reasonably limited bad faith exposures in appropriate areas. We ensured that deductibles aren’t waived. We helped insurance company clients improve their policy forms to address common issues. And we have taught the industry how to exercise “aggressive good faith” in dealing with interlopers who inject themselves into the claim process for their own personal gain.

So, yes, I am proud of the work we have done.

But to be honest, we have really only noodled around the edges. There are still far, far, far too many, at best reasonably disputed and at worst entirely fraudulent hail claims in Texas.

So what’s a real solution that will actually help fix the hail claim problem?

As you see from my LinkedIn posts, my efforts lately have focused on two such solutions.

First, mandating the use of Class 4 Hail-Resistant Roofing Shingles. We have to stop using shingles that everyone knows will fail in a minor hail event. We design in Texas for wind, rain, and even snow. But we don’t design for our most common peril – hail. By mandating the use of Class 4 Hail-Resistant Roofing Shingles on all new construction and roof replacements, we will greatly reduce the number of hail claims to begin with. That is the proverbial “win-win” for both homeowners and insurers. No roof damage means no insurance claim. No insurance claim means no deductible payment by the homeowner and no claim payment by the insurance company. Fewer claims mean lower risk severity. Lower risk severity means lower premiums. It’s not a hard concept. The Texas Legislature needs to pass legislation mandating the use of Class 4 Hail-Resistant Roofing Shingles.

Second, insurance companies should move to approved contractor networks (often called “managed repair”) for their hail damage roof claims. Once it is confirmed that the roof is damaged by hail and must be replaced, the insurance company should invoke the “Our Option” provision already in its policy and send out a qualified

7. **An Agreement that neither party will seek the unilateral appointment of an Umpire.** When the two appraisers cannot agree on an Umpire, the parties and the appraisers should agree to mutually seek the appointment of an umpire by an appropriate court.

8. **Agreement on an Umpire.** When the two appraisers make an agreement on an appropriate umpire for the process, that person's name should be listed in the Appraisal Protocol. An Appraisal Protocol can also allow the parties to agree on an appropriate umpire, if and when the two appraisers are unable to agree on one.

9. **No Unilateral Discussions.** The Appraisal Protocol should set forth an agreement by the parties and the appraisers that there will be no unilateral discussions between an appraiser and the umpire, unless the umpire requests such a discussion.

10. **Signatures by all parties and by all appraisers.**

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.

contractor to fix the damage. Or, better yet, the insurance company should include an endorsement in the policy under which the insured, preferably in exchange for a premium discount or other incentive, agrees to use an approved contractor network for any hail damage roof claim. Yes, the time has come for insurance companies to stop sending money out into the claims world and instead send out hammers and nails. The insured is in no way harmed by this approach. It still gets a properly installed and code-compliant roof. The only losers are all the interlopers – the storm chasing contractors, supplementing companies, public adjusters, appraisers, and policyholder attorneys – who all inject themselves into the claims process for their own financial gain. All of that goes away with a properly established, approved contractor program.

Only when we mandate the use of Class 4 Hail-Resistant Roofing Shingles (to minimize the number of claims) and routinely employ approved contractor networks (to minimize abuse in the claims that are filed) will we ever make real progress in fixing all the problems and abuses in Texas hail claims.

The time has come to employ both of these real solutions.

I want to retire soon.

AI Update

NAIC Launches Multi-State Pilot of AI Systems Evaluation Tool

by Jennifer Gibbs

The National Association of Insurance Commissioners (NAIC) has launched a collaborative pilot program to test its AI Systems Evaluation Tool, a structured framework designed to help state regulators assess how insurance companies use artificial intelligence and whether their governance practices effectively manage potential risks. The pilot will run from March 2026 through September 2026, involving twelve participating states: California, Colorado, Connecticut, Florida, Iowa, Louisiana, Maryland, Pennsylvania, Rhode Island, Vermont, Virginia, and Wisconsin.

According to one report, NAIC has stated that "existing insurance laws apply to AI-driven decisions the same way they apply to decisions made by human adjusters. Where the AI touches the policyholder, the regulatory interest follows."

The NAIC pilot aims to determine whether the Tool helps insurers clearly communicate their AI governance to regulators, supports ongoing improvement of the Tool, and helps create long-term recommendations for market conduct and financial risk assessment processes.

Participating states will use the Tool in market conduct exams, financial analysis, and financial examinations across property/casualty, life, and health lines of business. States will follow the principle of proportionality, focusing more on high-risk AI systems and less on low-risk back-office applications.

To support collaboration, states will participate in monthly coordination calls to avoid duplicative requests and share lessons learned. Training on AI, the Tool, and related topics will be provided to participating states and their staff. Any information requested from insurers will be protected under the confidentiality rules of the administering state.

Looking ahead, the NAIC plans to update the Tool based on pilot feedback in September and October 2026, issue a revised version for public review, and consider the updated Tool for adoption at the Fall National Meeting in November 2026. Notably, participation in the pilot does not preclude states from performing additional or other AI regulatory actions.

Spotlight

Shannon O'Malley and Laura Bartlow recently presented at the Loss Executives Association (LEA) on the use of artificial intelligence in claims handling. Their presentation provided practical guidance on leveraging AI effectively and in good faith, with a focus on maintaining professional judgment, ensuring accuracy, and navigating emerging ethical and legal considerations. The session offered actionable reminders and best practices for claims professionals seeking to incorporate AI tools into their workflows responsibly.

If your team is interested in learning more about the evolving role of AI in the claims process, Shannon and Laura are available to present this program as a webinar or in-person CE-accredited session.

Contact us

Yes, You Have to Go to Appraisal – Texas Supreme Court Again Rules in Favor of Enforcing an Appraisal Provision

by Shannon O'Malley

Since the 2009 decision in *State Farm Lloyds v. Johnson*, the Texas Supreme Court has repeatedly found property insurance/appraisal-related cases on its docket. Now, seventeen years later, the Court found itself again looking at the scope of appraisal and when and whether parties waive that contractual right.

Background

In *In re ACE American Insurance Company*, --- S.W.3d ----, 2026 WL 1261448 (Tex. 2026), the Court addressed whether a trial court abused its discretion in denying an insurer's motion to compel appraisal. The Texas Supreme Court granted writ and directed the parties to appraisal.

The dispute arose out of a June 12, 2022, water line break in the fire suppression system, which caused considerable water damage to the insured's warehouse concrete slab. The property was insured by a market of carriers who retained an independent adjuster to investigate and adjust the damage. The insured pleaded that the adjuster was minimally involved and "made a conscious choice to sit on the sidelines." The insured repaired the property and submitted its claim to the carriers.

On January 30, 2023, the carriers made an appraisal demand because, despite some payments issued by the carriers, the parties were allegedly at an impasse with respect to the remaining scope of damage and costs related to the claim. The insured rejected appraisal as premature and unwarranted. Based on that, the parties attempted to continue to negotiate the extent of covered damage.

By June 2024, the carriers re-asserted their demand for appraisal. At that time, the carriers had paid approximately $1.2 million for the damage while the insured sought $10 million under the policies' mold sublimit. Other disputes concerned using time and material pricing vs. fixed-pricing, coverage for increased building-code costs, and inflated pricing.

Upon the insured's rejection of the June 2024 appraisal demand, the carriers initiated suit to compel appraisal. The insured counter-sued for breach of contract. The trial and appellate courts declined to compel appraisal, prompting the carriers' writ of mandamus to the Texas Supreme Court.

Analysis

The Court revisited its prior assessment of appraisal, noting its purpose is to "resolve dispute about 'the amount of loss' for a covered claim." The insured argued appraisal was inappropriate for three reasons:

1. The parties' disagreement centered on threshold issue of coverage, causation, and "the very existence of damage" rather than the "amount of loss."
2. There is no genuine disagreement about the amount of loss because the carriers had not clearly stated their position on the issue.
3. The carriers engaged in a pattern of bad faith, "coverage-avoiding" conduct during the adjustment process, which excused the insured from its obligation to comply with the appraisal provision.

The Court addressed each of these arguments.

First, the Court addressed the "scope of appraisal: coverage vs. amount of loss." The Court revisited its discussion in *Johnson*, noting that the issue there addressed "how many shingles were damaged and needed replacing, which was a question for the appraisers because it necessarily affected the replacement cost and, in turn, the amount of loss." The Court reiterated its holding in *Johnson* and noted that case "demonstrates that a party who seeks to avoid appraisal in the first instance on the ground that the dispute falls outside the scope of the appraisal provision…must clear a significant hurdle."

In this case, the Court found the parties' dispute was at least in part about the amount of loss and noted potential coverage disputes do not defeat a contractual right to appraisal. The carriers maintained that the insured spent more than necessary to return

the property to its pre-loss state. The Court found that fell clearly within a policy's appraisal scope.

This includes the parties' dispute over mold coverage, which the Court found did not render the amount of loss issue moot. Nor did the question of the proper measure of loss – be it on a time and material or fixed price contract: the reasonable measure of damage is an appraisable issue. Similarly, the scope of necessary repairs governed whether claimed code upgrades were necessary. "Again, the scope of the needed repairs—which would include the costs traceable to compliance with building codes—is an issue for the appraisers."

In reaching its decision to compel appraisal, the Court noted, that it "hold[s] only that any such coverage disputes do not render an appraisal improper in the first instance."

Next, the Court addressed whether there was a genuine disagreement on the amount of loss. The carriers maintained that "they paid all that is owed" under the claim. The Court recognized that the carriers' measure is the "amount of loss" the carriers maintained is due. The fact that the insured maintained a higher amount was due was sufficient to show that there was a dispute as to the amount of loss. The Court noted that even if the carriers' position on what was owed under the policy shifted over time, "it is nevertheless abundantly clear that [the carriers] have consistently viewed the amount of loss as significantly less than the Insured does. The appraisal provision requires nothing more."

Finally, the insured argued that the carriers' material breach of the policy precluded the insured's responsibility to comply with the policy's appraisal provision—*i.e.* that when one party breaches a contract, the other party is excused from performance. The Court noted that "[c]ourts have uniformly rejected similar arguments, and for good reason." This is because (1) the only exception to the appraisal procedure is illegality and waiver – neither of which applied here; and (2) since appraisal should take place before litigation, there is no finding of breach of contract yet, excusing an insured from complying with the policy terms. Essentially, the second argument "puts the cart before the horse" because there has been no finding of breach yet. Therefore, the Court determined "an insurer's alleged bad faith in handling a claim does not constitute an exception to the general enforceability of an appraisal clause."

The Lowdown: In Texas, appraisal is always appropriate to determine the amount and scope of damage. Even if there are coverage issues, bad faith allegations, and other equitable claims – a court will enforce an insurance policy's appraisal provision to resolve disputes concerning the amount and scope of damage.

Pleading Precision and Pre-Suit Notice: Lessons from *Sunshine Eastgate Plaza LLC v. Lexington Insurance Co.*

by Adrienne Nelson

On May 19, 2026, Chief United States District Judge Reed O'Connor of the Northern District of Texas issued a memorandum opinion and order in *Sunshine Eastgate Plaza LLC v. Lexington Insurance Company, et al.*, Civil Action No. 3:25-CV-02986-O, granting motions to dismiss and to strike filed by defendants Axis Surplus Insurance Company and StarStone Specialty Insurance Company.

The case arose from an insurance coverage dispute over alleged storm damage to a commercial building. The property was insured under three separate commercial property policies issued by Lexington Insurance Company, Axis, and StarStone, with effective dates from November 1, 2023 to November 1, 2024. Plaintiff Sunshine Eastgate Plaza LLC alleged that the property sustained wind and hail damage on September 24, 2024, and that after filing a claim and submitting to an inspection, the defendants failed to pay the full benefits owed under the policies. On September 26, 2025, Sunshine Eastgate filed suit asserting claims for breach of contract, violations of Chapters 541 and 542 of the Texas Insurance Code, and declaratory judgment.

Axis and StarStone moved to dismiss Sunshine Eastgate's extracontractual claims under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, arguing that the complaint contained only threadbare and conclusory allegations in support of claims for various violations of Texas Insurance Code Chapter Sections 541.060 and 541.061 and 542.055-542.058. Notably, the plaintiff filed no response to the motions to dismiss.

The court applied the well-established plausibility standard set forth in *Ashcroft v. Iqbal* and *Bell Atlantic Corp. v. Twombly*, requiring that a complaint plead "enough facts to state a claim to relief that is plausible on its face". *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). Critically, because Sunshine Eastgate's claims were intertwined with allegations of misrepresentation, the court also applied the heightened pleading standard of Federal Rule of Civil Procedure 9(b), which requires plaintiffs to plead the "who, what, when, where, and how" of the alleged misconduct.

The court found that the complaint's allegations were little more than "legal conclusions couched as factual allegations." *Sunshine* Eastgate, 2026 WL 1399341 at *3. For instance, the complaint alleged that the defendants "failed to properly investigate, evaluate, and adjust Plaintiff's claim" and "performed an outcome-oriented investigation," but offered no explanation as to how the investigation was deficient or how any specific defendant misrepresented material facts. *Id.* at *2. Similarly, the plaintiff's claims under Sections 542.055 through 542.058 of the Code were "essentially verbatim recitations" of the statutory provisions, devoid of any supporting factual content. *Id.* at *3. The court dismissed all of the plaintiff's extracontractual claims against both Axis and StarStone.

Perhaps equally significant was the court's ruling on the defendants' motion to strike the plaintiff's claim for attorney's fees. Under Section 542A.003 of the Texas Insurance Code, a claimant must provide written notice to each defendant insurer at least 61 days before filing suit, including a statement of the acts or omissions giving rise to the claim, the specific amount alleged to be owed by each insurer, and the

amount of attorney's fees incurred. Tex. Ins. Code §§ 542A.003 (a)-(b). If notice is provided by an attorney or representative on the claimant's behalf, compliance with § 542A.003(c) is also required.

Here, Sunshine Eastgate had sent a single pre-suit Notice of Intent letter addressed only to Ryan Vesta and Lexington Insurance Company. That letter described no acts or omissions by either StarStone or Axis and failed to separately state the amount owed by each insurer. Citing the Texas Supreme Court's decision in *In re Lubbock Independent School District*, the court held that a "single notice to all insurers" that does not separately state the amount alleged to be owed by each insurer fails to satisfy the statute's requirements. *In re Lubbock Indep. Sch. Dist.,* 700 S.W.3d 426, 428 (Tex. 2024) (per curiam). Because the plaintiff only provided notice to Lexington, its pre-suit obligations to StarStone and Axis were not met.

The plaintiff argued in the alternative that, if the court found notice deficient, the appropriate remedy should be a limited abatement to allow supplemental notice rather than striking attorney's fees. The court rejected this argument, noting that the 2017 amendments to the Insurance Code provide defendant-insurers with a choice of remedies when pre-suit notice is deficient, and that StarStone and Axis had elected to limit the plaintiff's attorney's fees under Section 542A.007(d). The court ordered that the plaintiff shall not recover any attorney's fees incurred after the filing date of StarStone's Section 542A.007(d) pleading on November 10, 2025.

The *Sunshine Eastgate* decision serves as a pointed reminder that federal courts in Texas will not tolerate boilerplate pleading in insurance bad faith cases. Complaints that merely parrot the statutory language of Chapters 541 and 542 without articulating specific facts — particularly where misrepresentation claims trigger Rule 9(b) — are vulnerable to dismissal at the earliest stages. Plaintiffs must identify specific acts by specific defendants and explain, with factual particularity, how those acts violated the Insurance Code.

Second, the decision underscores the importance of individualized pre-suit notice when multiple insurers are involved. A blanket notice sent to one insurer does not satisfy the statutory obligation to each insurer, and the failure to comply can result in the forfeiture of attorney's fees — a significant financial consequence.

Fifth Circuit Confirms Insured's Burden to Show Damage Occurred on Date of Loss Within Policy Period

by Austin Taylor

Recently, the United States Court of Appeals for the Fifth Circuit confirmed that an insured cannot establish coverage by simply presenting evidence that her property was damaged at some point while an insurer was underwriting a risk. Rather, the policyholder must demonstrate that damage occurred on a date of loss within the applicable policy period to meet the burden of establishing coverage under Texas law. *Thompson v. State Farm Lloyds*, No. 24-20519, 2026 WL 1419376 (5th Cir. May 20, 2026).

Factual Background

Dora Thompson owned a home in Cypress, Texas, insured by State Farm. State Farm insured the property since April 2007. In February 2022, after experiencing roof leaks, Thompson hired a contractor to inspect her roof. The contractor concluded that the home needed a full roof replacement from damage allegedly sustained during a hailstorm on September 28, 2021. Thompson's contractor estimated the cost for roof replacement at $44,419.05. Based on this assessment, Thompson filed a claim with State Farm.

State Farm's third-party inspector found minor hail damage to a window screen and gutter but no hail damage to the roof itself, estimating covered damage at only $541.92 — well below Thompson's $14,186 deductible. Thompson then invoked appraisal, and the appraisal panel ultimately set the replacement cost value of the damage at $57,983.61.

State Farm declined to pay the appraisal award, maintaining its position that there was no covered damage to the roof and that any covered losses encompassed by the award did not exceed the policy's deductible. Thompson then filed suit against State Farm in Texas state court. The case was removed to the U.S. District Court for the Southern District of Texas, where the district court granted summary judgment in State Farm's favor on the basis the loss did not occur within the policy period.

The Court's Analysis

On appeal, Thompson contended that the district court erred in granting summary judgment, arguing that the evidence was sufficient to establish a *prima facie* case of coverage. Specifically, Thompson argued that she had met this burden by establishing that State Farm had continuously insured her home under a single policy number from the time that it was built. In essence, "[t]he policy was . . . in effect whenever the damage to the roof occurred."

The Fifth Circuit squarely rejected this argument, focusing on the threshold requirement under Texas law that an insured bears the burden of making a prima facie case of coverage—including presenting evidence that "a covered injury or loss was incurred at a time covered by the policy and incurred by a person whose injuries are covered by the policy." *Id.* at *2 (quoting *Seger v. Yorkshire Ins. Co.*, 503 S.W.3d 388, 400 (Tex. 2016)). The court noted that "[i]t is a time-honored principle that the insurer's obligation to pay is contingent on a covered loss occurring during the policy period." *Id.*

The Fifth Circuit also applied the longstanding Texas rule that a renewal of a policy constitutes a "separate and distinct contract" for the period of the renewal, unless the parties clearly express an intent to continue the original contract. *Id.* at *3 (citing *Great Am. Indem. Co. v. State*, 229 S.W.2d 850, 853 (Tex. App.—Austin 1950, writ ref'd)). The court observed that the policy's effective dates of coverage were April 12, 2021, to April 12, 2022, and there was no evidence the parties intended otherwise.

The court then examined whether the record contained any evidence tying the damage to a specific policy period. The court summarized the opinions of Thompson's expert, Micah Harrison, as follows:

> Harrison concluded after a January 2024 inspection that hail damage to Thompson's roof "appear[ed] to be only a few years old but could be as recent as a few months old" based on his observation that "the impacted areas d[id] not yet show exposed fiberglass." According to Harrison, the hail impact areas were "not uniform in size" and it was "possible that the impacts originate[d] from a single storm that had a variation of sizes or could be the result of more than one event." At his deposition, Harrison added that the damage could have occurred "slightly before, maybe slightly after" the September 28, 2021, storm and agreed that none of the damage appeared to be recent storm damage.

Id. at *3. The Fifth Circuit concluded that this amounted to mere "supposition as to the time of Thompson's loss" and was insufficient to create a genuine dispute of material fact. *Id.* at *3–4.

Conclusion

This decision underscores that to establish coverage, an insured must present competent evidence that the loss occurred during the relevant policy period. Vague or speculative expert opinions — such as testimony that damage happened "possibly" from one storm or from several across a multi-year span — are not sufficient to meet this burden. Moreover, an insured cannot meet this burden by simply establishing that an insurer had continuously insured the property and a policy was in effect when the alleged damage occurred.

BEYOND THE BLUEBONNETS

Proposed Bad Faith and Appraisal Legislation Makes Waves in the Ocean State

by Elizabeth Reidy (Boston office)

A series of property insurance-related bills introduced in the Rhode Island General Assembly's 2026 Legislative Session could significantly reshape the state's regulatory framework governing property insurance claims. Taken together, these measures would expand regulatory obligations and potentially increase exposure to claims related litigation. Each of these bills was referred to Committee and have been "held for further study," enabling legislators to evaluate the testimony submitted and consider potential amendments. These bills include:

- S.B. 2204 and S.B. 2205, and their companion bills of H.B. 7515 and 7512, introduce new definitions, including "claimant," which is defined to include third-party beneficiaries and assignees operating under assignments of benefits," "insurance adjuster" and "insurance claim handling services." These broad definitions require any person who evaluates, inspects, or offers opinions on damage, causation, repair scope, or replacement cost in connection with an insurance claim, regardless of job titles, to hold appropriate licenses and registrations.

- S.B. 2261, and the companion bill H.B. 7521, propose to overhaul Rhode Island's standard fire insurance policy (R.I. Gen. Laws. §§ 270503 and 27-5-9.1). Among other provisions, these bills substantially alter the statutory appraisal process by expressly permitting appraisal where coverage is disputed, impose detailed qualification standards for appraisers and umpires, and require insurers to bear the costs of both appraisers if they initiate the appraisal process. These bills also define replacement cost value to include all necessary labor, materials, and compliance costs without depreciation, while limiting the application of depreciation under actual cash value. Moreover, they mandate that awards include 12 percent interest calculated from the date of loss. Finally, these bills increase the statute of limitations for non-fire or lightening homeowners' claims to ten years.

- S.B. 2311, and the companion bill H.B. 7517, propose fundamental changes to "bad faith" liability in Rhode Island (R.I. Gen. Laws §§ 9-1-33 and 27-9.1-10), by removing the statutory requirement that there be a breach of contract prior to commencement of an action for bad faith. These bills also add a private cause of action for unfair claims settlement practices and authorize recovery of actual damages, attorneys' fees, and enhanced damages of up to twice the amount of actual damages. These bills further re-define "unfair claims practices" to include, among other practices: (a) assigning, permitting or relying upon adjusters or agents who lack the training, education or experience reasonably necessary to competently

investigate, evaluate, negotiate or settle the loss; (b) using any business entity not properly registered with the state of Rhode Island or up to date with required annual filings; and (c) failing to account for consequential damage when calculating replacement cost or actual cash value.

- S.B. 2312, and the companion bill S.B. 7516, revise the statutory appraisal process in Rhode Island (R.I. Gen. Laws § 10-3-6, 10-3-15). These measures authorize courts to appoint appraisers or umpires when a party fails to act or causes unreasonable delay for both the non-complying party and the umpire or third arbitrator. These bills also reduce the time frame to move to vacate, modify or correct an award from 60 days to 30 days.

Industry groups have raised significant concerns about these bills. The Rhode Island Insurance Federation warned that "[t]ogether these are designed to make Rhode Island look more like Florida in their pre-2023 reform era, where assignment of benefit abuses ran rampant and significantly deteriorated the property insurance market." It further commented that, as a result of these bills, Rhode Island "would become a true outlier in not requiring a breach of contract to accuse an insurer of operating outside their duty of Good Faith and Fair Dealings," which will "invite a flood of new cases from entrepreneurial attorneys, which will increase the cost of claims and thus increase premiums."

Likewise, the American Property and Casualty Insurance Association cautioned that the "ultimate goal of" the bills "is to empower practitioners of assignments of benefits (AOB) abuse"—while an "AOB can streamline the process from a homeowners' perspective," it is "also ripe for abuse as unscrupulous contractors may try to get as much money from the insurer as possible and complete the work for as cheaply as possible as they stand to gain the delta." These bills, according to APCIA, "would make Rhode Island one of the top assignment of benefits abuse states in the country" and would "generate explosive additional costs for Rhode Island residents."

These sentiments are echoed by the Rhode Island Joint Reinsurance Association (the RI Fair Plan), the National Association of Mutual Insurance Companies, the National Crime Insurance Bureau, the American Council of Life Insurers and Beacon Mutual, all of whom submitted written opposition to one or more of these bills. In addition, the Rhode Island Department of Business Regulation, the CRLB License Committee and others have submitted written opposition against these bills.

The written remarks in favor of one or more of these bills argue that the legislation is intended to strengthen consumer protections and claims-handling obligations. Notably, the only proponents of these bills are employed by New England Property Services Group, LLC, a Massachusetts-based storm restoration contractor that enters into home repair contracts and assignments of benefits from Rhode Island and other New England homeowners.

Although these bills have not progressed beyond committee at this time, they warrant close attention from insurers operating in Rhode Island. If enacted—whether individually or as a package—they would materially shift the state's insurance landscape, positioning Rhode Island among the more policyholder-friendly jurisdictions and increasing regulatory, operational, and litigation risk for insurers.

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.

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