

By: Will Beasley

The Texas Supreme Court to Hear Two Post Appraisal Summary Judgment Cases

Texas was well known for its cottage industry of suing insurers. Appraisal (e)stopped this industry in its tracks. There is no shortage of authority to cite in a summary judgment or appellate brief for this argument. And it's the right outcome. After appraisal is paid, all the “claims” are resolved, and the case should be dismissed. But it's almost never that simple. Plaintiffs continue to fight on in the face of decisive and voluminous authority to the contrary.



They fight tooth and nail at summary judgment, then kick the matter up the Texas appellate food chain in the hopes of creating favorable law based on some “new” (i.e. recycled) argument.

Now, after remaining silent on the issue for so long, the Texas Supreme Court is ready to weigh in. On February 20th, the Court will hear oral arguments for two post appraisal summary judgment cases.

We've all seen these insurance policy lawsuits. They usually pop up a few months after a policy claim was seemingly resolved. Almost invariably, they follow a copy paste approach that throws a kitchen sink worth of claims at the insurer (and the adjuster). You can expect to see claims for: breach of contract; fraud; conspiracy to commit fraud; violations of the DTPA; violations of the Prompt Payment of Claims Act; violations of the Texas Insurance Code; and violation of the duty of good faith. Indeed, these lawsuits are often filed with little regard for the truth, as Judge Micaela Alvarez of the Southern District of Texas lamented in a *Judicial Notice* to a prominent plaintiffs firm which said that “the Court has observed an unacceptable and systematic practice by Plaintiffs’ counsel ... of filing numerous and unfounded claims.”

Luckily, a timely paid appraisal award, even if invoked after suit is filed, sounds the death knell for all of these “claims.” Therefore, our strategy for these types of cases is simple: (1) invoke appraisal; (2) immediately pay the award; and (3) seek summary judgment. Based on current Texas authority, the trial court should dismiss the entire lawsuit. But, all the authority on this issue is either Federal District Court, Texas Appellate Court, or Fifth Circuit Court of Appeals authority. The Texas Supreme Court hasn't weighed in yet. They will soon.

¹*Barbara Technologies Corp v. State Farm Lloyds* and *Ortiz v. State Farm Lloyds*.

²The Notice has been reprinted [here](#).

Texas • Florida
Oklahoma • Arkansas

Dallas

1301 Solana Blvd.
Bldg. 1, Suite 1545
Westlake, Texas 76262
(214) 722-7160

Miami

1200 Brickell Avenue
Suite 1950
Miami, Florida 33131
(305) 961-1691

www.langleyslaw.com

To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

Well done is better than well said.

- Benjamin Franklin



We believe that the correct outcome will be for the Texas Supreme Court to cement the reasoning of the many appellate courts that have addressed the issue, and rule that appraisal resolves the entire case and bars contractual and extracontractual claims. But with any high court, it's tough to guess the outcome—especially without having witnessed the Court's demeanor during argument. Accordingly, keep an eye out for our next update after oral argument, which is currently set for February 20th. In the meantime, should you be faced with one of these form lawsuits, don't hesitate to give us a call.

Will Beasley is an associate at Langley LLP and may be contacted at wbeasley@l-llp.com.

This publication is for information purposes only and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without consulting a lawyer.