INDEX TO TEXAS APPRAISAL DECISIONS THROUGH 2008

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2008

Salinas v. State Farm Lloyds, 267 Fed. Appx. 381; 2008 WL 552498; 2008 U.S. App. Lexis 4365 (C.A.5.Tex., 2008)[1]
Under Texas law, insureds were not entitled to appraisal under homeowners insurance policy, even though insurer had accepted partial coverage and made partial payments, where, after insurer paid initial claim, it consistently maintained that remaining claims were not covered, that policy did not cover mold damage, and that any remaining water damage was caused by wear and tear and not from plumbing leaks, but insureds made no attempt to confine appraisal so as to avoid implicating coverage issues.

Laird v. CMI Lloyds, 261 S.W.3d 322 (Tex. App. Texarkana 2008)
Umpire's appraisal award for damage caused by water leaks did not bind homeowners insurer to pay such amount, as questions of causation and coverage remained; though insurer did not contest the amount of loss, it contested the cause of certain damages and, thus, the extent to which it was responsible for paying those amounts under the policy.

2007

Richardson v. Allstate Texas Lloyd's, 235 S.W. 3d 863 (Tex. App. Dallas 2007)
Insured's acceptance of insurer's check occurred under financial duress, and thus, was not an acceptance-of-benefits that estopped insured from pursuing action seeking to overturn insurer's appraisal award on claim for sewer damage to insured's home; in this case, the facts showed insured's two-year-old grandson had undergone medical surgery without insurance creating an economic hardship, and the grandson's health made repairs to the house more urgent.

In re Acadia Ins. Co., Not Reported in S.W. 3d, 2007 WL 1976111; 2007 Tex. App. Lexis 5355 (Tex. App. Amarillo 2007)[2]
Denying coverage under a property insurance policy waives the right of the insurer to request an appraisal.

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[1] Under *Fed. R. App. P.* 32.1, a court may not prohibit or restrict the citation of unpublished federal judicial opinions issued after January 1, 2007.

[2] Effective January 1, 2003, *Texas Rule App. Proc.* 47 was amended to prospectively discontinue designating opinions in civil cases as either "published" or "unpublished." All opinions and memorandum opinions in civil cases issued after the 2003 amendment have precedential value.

Amine v. Liberty Lloyds of Texas Ins. Co., Not Reported in S.W. 3d, 2007 WL 2264477; 2007 Tex. App. Lexis 6280 (Tex. App. Houston, 1 Dist. 2007)[3]
Full and timely payment of an appraisal award under the policy precludes an award of Article 21.55 penalties as a matter of law. (Texas Insurance Code's late payment provision now found at *Tex. Ins. Code* 542.058)

2006

Johnson v. State Farm Lloyds, 204 S.W. 3d 897 (Tex. App. Dallas 2006)
Dispute over extent of damage to roof from hail concerned "amount of loss" within the meaning of homeowners policy provision entitling either party to demand appraisal on amount of loss, where the insured and insurer agreed that there was coverage.

Parties may be compelled to appraisal where they fail to agree on the amount of loss of a covered claim.

Lundstrom v. United Services Auto. Ass'n-CIC, 192 S.W. 3d 78 (Tex. App. Houston, 14.Dist. 2006)
Covered portion of insureds' claim for water damage in home was properly resolved by binding appraisal; no coverage issues were before the umpire and appraiser, the insurer agreed to cover the loss occurring at the time of the initial water intrusion and asked the appraisers to determine the amount of that loss, and the appraisal award did not partition a loss among various causes.

Appraisal awards made under the provisions of an insurance contract are binding and enforceable, and a court will indulge every reasonable presumption to sustain an appraisal award.

Because a court indulges every reasonable presumption to sustain an appraisal award, the burden of proof is on the party seeking to avoid the award in an insurance case.

The effect of an appraisal provision is to estop one party from contesting the issue of damages in a suit on the insurance contract, leaving only the question of liability for the court.

Waterhill Cos. Ltd. v. Great American Assurance Co., No. 05-4080 CV, 2006 WL 696577; 2006 U.S. Dist. Lexis 15302 (S.D. Tex. March 16, 2006)[4]
When the appraisal clause is invoked, a delay in payment pursuant to the appraisal process does not constitute an Article 21.55 violation. (Late payment provision, now found at *Tex. Ins. Code* 542.058)

[3] Effective January 1, 2003, *Texas Rule App. Proc.* 47 was amended to prospectively discontinue designating opinions in civil cases as either "published" or "unpublished." All opinions and memorandum opinions in civil cases issued after the 2003 amendment have precedential value.
[4] Under *5th Cir. R.* 47.5.4, unpublished opinions issued on or after January 1, 1996, are not precedent, however, an unpublished opinion may be cited for its persuasive force. If cited in any document being submitted to the court, a copy of the unpublished opinion must be attached to each document.

2005

In re State Farm Lloyds, Inc., 170 S.W. 3d 629 (Tex. App. El Paso 2005)
To defeat property insurer's motion to enforce policy's appraisal provision on ground of waiver in insured's breach-of-contract action, which arose from damage to personal property that was caused by fire at home, insured had burden to show that insurer's alleged failure to comply with other policy provisions constituted intentional relinquishment of its right to seek appraisal or evidenced intent to dispense with policy's requirements which would enable insurer to arrive at amount of loss.

2004

Franco v. Slavonic Mut. Fire Ins. Ass'n, 154 S.W. 3d 777 (Tex. App. Houston 14 Dist. 2004)
The effect of an appraisal provision is to estop one party from contesting the issue of damages in a suit on the insurance contract, leaving only the question of liability for the court.

Appraiser selected by property insurer was not shown to be biased against insureds, even though the adjuster had hired him as an engineer to inspect the house and determine the cause of the damage from a plumbing leak; the appraiser was not an employee of the insurer, nothing indicated that the insurer influenced or exercised control over him, and the insureds' appraiser and umpire entered the final award.

The showing of a pre-existing relationship, without more, does not support a finding of bias by an insurer's appraiser.

General Star Indem. Co. v. Spring Creek Village Apartments Phase V, Inc., 152 S.W. 3d 733 (Tex. App. Houston 14 Dist. 2004)
A property appraiser with a financial interest in the outcome of the appraisal is not impartial.

Breshears v. State Farm Lloyds, 155 S.W. 3d 340 (Tex. App. Corpus Christi 2004)
Insurer's initial payment for loss that was less than a later appraisal was not grounds for breach of contract action by insureds; policy stated that appraisal set the amount of loss and was binding on insurer and insured, and insurer made additional payment to fully pay the amount of appraised loss.

Prejudgment interest is owed following a *judgment* in a property damage case (*Tex. Fin. Code* §304.102). Insurers owe prejudgment interest only if they withhold benefits in breach of the insurance contract. Here, as there was no breach of contract and consequently no judgment to base interest calculations, prejudgment interest could not be awarded.

An appraisal award is binding and enforceable unless the insured proves that the award was unauthorized or the result of fraud, accident, or mistake.

2002

In re Allstate County Mut. Ins. Co., 85 S.W. 3d 193 (Tex. 2002)
Trial court was not required to abate the proceedings in insureds' suit against insurers while the appraisals went forward.

Although the trial court had no discretion to deny appraisals requested by insurers, it did have some discretion as to the timing of the appraisals.

Allison v. Fire Ins. Exchange, 98 S.W. 3d 227 (Tex. App. Austin 2002)
Homeowner did not establish that claims appraiser, appointed by insurer pursuant to homeowner's insurance contract, lacked competence or independence, as basis for setting aside appraisal award; while appraiser had performed four or five prior claims appraisals for insurer, appraiser was independent contractor, appraiser was structural engineer with extensive experience in construction industry, and appraiser retained mold experts to assist him with mold remediation cost estimates.

A claims appraisal award made pursuant to the provisions of an insurance contract may be set aside when it was: (1) made without authority; (2) the result of fraud, accident, or mistake; or (3) not made in substantial compliance with the terms of the contract.

Clerical error of claims appraisers, appointed pursuant to homeowner's insurance contract, in listing “alternative living expenses” instead of “additional living expenses” for costs of homeowner's family living away from house during mold remediation, was not the type of mistake which would warrant setting aside appraisal award.

Gardner v. State Farm Lloyds, 76 S.W. 3d 140 (Tex. App. Houston 1 Dist. 2002)
Appraiser selected by homeowners' insurer to evaluate hail loss was independent, even though the appraiser's employer wrote a training program used by the insurer about hail damage claims, wrote numerous publications about hailstorm evaluations, served as a consultant for the insurer, and was paid by the insurer's companies for assignments across the United States over seven years; the insurer did not direct the appraiser to reach any conclusions, and the appraiser did not perform some act or conduct tending to exhibit his serving the insurer's interest as a partisan would.

Hernandez v. Fire Ins. Exchange, Not Reported in S.W. 3d, 2002 WL 32344598 (Tex. App. Eastland 2002)[5]
Appraisal award that property insurer owed nothing could not be set aside on basis of appraiser's allegedly loud and unprofessional statement to umpire that the insured was committing fraud because he was filing another claim for damages he had failed to repair previously; the statement provided no evidence relating to the factors required to set aside an appraisal award (lack of authority, fraud, accident or mistake).

[5] Under *Texas Rules App. Proc.* 47.7, unpublished opinions prior to January 1, 2003, have no precedential value but may be cited with the notation “(not designated for publication).”

Germania Farm Mut. Ins. Ass'n v. Williams, Not Reported in S.W. 3d, 2002 WL 32341841 (Tex. App. Eastland 2002)[6]
Evidence that appraisers who looked at homeowners' roof damage improperly considered cause of loss and limited their award to loss caused by hail or wind was sufficient to support trial court's finding, in homeowners' action against insurer, that appraisal award resulted from fraud, accident, or mistake.

1999

Vanguard Underwriters Ins. Co. v. Smith, 999 S.W. 2d 448 (Tex. App. Amarillo 1999)
Appraisal and no action clauses of homeowners' insurance policy were unambiguous and enforceable; thus, the insureds could not sue to recover for a property loss before they complied with the appraisal clause.

Clear and unambiguous provisions of homeowners' insurance policy requiring appraisal and precluding suit against the insurer without compliance with the policy provisions entitled the insurer to abatement of the insureds' lawsuit until the completion of the appraisal.

1996

Wells v. American States Preferred Ins. Co., 919 S.W. 2d 679 (Tex. App. Dallas 1996)
Insured's participation in appraisal process concerning loss potentially covered under insurance policy does not constitute agreement by insured to authorize appraisal panel to determine questions of what caused or did not cause loss.

Appraisal does not resolve coverage issues.

Appraisal clause of homeowners' insurance policy that could be triggered by disagreements about "actual cash value," "amount of loss," or "cost of repair or replacement" authorized appraisers to determine amount of loss only, not what caused or did not cause loss.

Appraiser's acts in excess of authority conferred upon him by appraisal agreement are not binding on parties.

Toonen v. United Services Auto. Ass'n, 935 S.W. 2d 937 (Tex. App. San Antonio 1996)
Lack of authority, fraud, accident, or mistake are affirmative defenses to liability on appraisal award made pursuant to insurance policy.
(In this case adjuster had been hired to deal with insurer in resolving the matter, and so had implied actual authority or apparent authority to invoke appraisal process on insured's behalf, and both attorney and insured were completely silent when given notice of the appraisal process and award.)

[6] Under *Texas Rules App. Proc.* 47.7, unpublished opinions prior to January 1, 2003, have no precedential value but may be cited with the notation "(not designated for publication)."

1994

Providence Lloyds Ins. Co. v. Crystal City Independent School Dist., 877 S.W. 2d 872 (Tex. App. San Antonio 1994)
Award entered by appraisers and umpire under insurance contract can be disregarded if: (1) award was made with-out authority; (2) award was made as result of fraud, accident or mistake; or (3) award was not made substantially in compliance with requirements of policy.

In ruling on whether appraisal award made under insurance policy should be enforced, court need not go behind umpire's award and analyze his mental processes.

1992

Barnes v. Western Alliance Ins. Co., 844 S.W. 2d 264 (Tex. App. Fort Worth 1992)
Insurance appraisal award entered by appraisers and umpire can be disregarded in only two instances: if award was made without authority or if award was made as result of fraud, accident, or mistake.

Insurer, and not insured, had burden of proof on whether insurance appraisal award should be set aside because of fraud, accident, or mistake in insured's action to enforce insurance appraisal award.

Jury finding that insurance appraisal award should be set aside because of fraud, accident, or mistake was supported by some evidence; insured admitted that he had previously lied about hail damage to roof and about repair costs.

1990

Hartford Lloyd's Ins. Co. v. Teachworth, 898 F.2d 1058 (C.A. 5 Tex. 1990)
Appraisal provision in Texas multiperil policy did not constitute “arbitration agreement” governed by Federal Arbitration Act; appraisal determined only amount of loss, and was informal as opposed to quasi-judicial in nature.

1974

Standard Fire Ins. Co. v. Fraiman, 514 S.W. 2d 343 (Tex. Civ. App. Houston 14 Dist., 1974)
The legislatively mandated appraisal clause found in standard fire insurance policy is not a provision for arbitration, subject to revocation by either party prior to award, but rather is a provision for appraisal.

1960

International Service Ins. Co. v. Brodie, 337 S.W. 2d 414 (Tex. Civ. App. Fort Worth 1960)
Fire policy provision requiring appraisal of loss if demanded by either party is inserted wholly for the protection of the insurer, but the insurer is not permitted to use such clause oppressively or in bad faith.

1959

Gulf Ins. Co. v. Carroll, 330 S.W. 2d 227 (Tex. Civ. App. Waco 1959)
In action on policy, for damage to house allegedly caused by windstorm, hail and rain, wherein defendant filed plea in abatement, alleging that appraisal procedure under policy was condition precedent to suit, evidence sustained finding that insurer had waited an unreasonable length of time before making request for appraisal of loss and had thereby waived its right to appraisal under terms of policy.

1934

New York Underwriters' Ins. Co. v. Sproles, 73 S.W. 2d 857 (Tex. Civ. App. Galveston 1934)
Where failure of appraisers to agree on a third person to act as umpire, and to make appraisement of damage caused house by windstorm as provided by policy, was fault of insurer, insured could institute suit to ascertain damage.

1933

Reliance Ins. Co. of Philadelphia v. Nichols, 56 S.W. 2d 479 (Tex. Civ. App. El Paso 1933)
Insured cannot be deprived of right to treat claim as liquidated demand for full amount of policy by insurer's wrongful demand that insured submit to appraisal to extent of loss.

Phoenix Assur. Co., Limited, of London, England, v. Davis, 67 F. 2d 824 (C.A. 5 Tex. 1933)
Fraud, misconduct, carelessness, or partiality of appraisers resulting in, and evidenced by, award grossly below actual loss, justifies setting aside of award under fire policy.

1931

Export Ins. Co. v. Axe, 36 S.W. 2d 572 (Tex. Civ. App. Eastland 1931)
Where insured property is realty and loss total, stipulation in fire policy for appraisement is inapplicable.

Evidence established that property covered by fire policy was realty, and that loss was total; hence insured were not required to have loss submitted to appraisers.

Pennsylvania Fire Ins. Co. v. W.T. Waggoner Estate, 39 S.W. 2d 593 (Tex. Com. App. 1931)
Inadequacy of appraisers' award may be considered in determining appraisers' bias and prejudice.

1929

Pennsylvania Fire Ins. Co. v. W.T. Waggoner Estate, 41 S.W. 2d 340 (Tex. Civ. App. Amarillo 1929)
Appraiser, to be "disinterested," must not only be without pecuniary interest, but he must also be without prejudice against or bias in favor of either party.