

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

February 11, 2025

Lyle W. Cayce  
Clerk

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No. 24-20179

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STERLING SENECHAL,

*Plaintiff—Appellant,*

*versus*

ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:23-CV-686

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Before DAVIS, HIGGINSON, and DOUGLAS, *Circuit Judges*.

STEPHEN A. HIGGINSON, *Circuit Judge*:

In this insurance appeal, Sterling Senechal challenges the district court's grant of summary judgment in favor of his insurer, Allstate Vehicle and Property Insurance Company, on his extracontractual claims. For the reasons that follow, we AFFIRM in part and VACATE in part.

I.

On January 28, 2022, Sterling Senechal submitted a claim under his homeowner's insurance policy with Allstate, alleging water damage to his property caused by a broken water heater. Over the next several months,

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Allstate issued three payments totaling \$12,410.48 to repair Senechal's property and to cover additional living expenses. Following a dispute about the loss amount, Senechal invoked appraisal. In September 2022, Senechal's and Allstate's appraisers agreed on the loss amount, arriving at an actual cash value (ACV) of \$58,396.58. Later that month, Allstate paid the appraisal award, minus the policy's deductible and prior payments.

In January 2023, Senechal filed suit in state court, alleging breach of contract, violations of the Texas Prompt Payment of Claims Act (TPPCA, codified under Chapter 542 of the Insurance Code), various bad faith claims under Chapter 541 of the Texas Insurance Code (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices), and breach of the common law duty of good faith and fair dealing. Allstate removed the case to federal court, asserting diversity jurisdiction. In May 2023, while the litigation was ongoing, Allstate paid Senechal what it calculated to be the "maximum potential interest" to which Senechal was entitled. Allstate then moved for summary judgment, arguing that its prompt payment of the appraisal award and interest defeated Senechal's claims. Senechal conceded that summary judgment was appropriate on the breach of contract claim but opposed summary judgment on his other claims. The district court agreed with Allstate and granted summary judgment in full.

Senechal timely appealed the district court's order. Our court has jurisdiction under 28 U.S.C. § 1291 and 28 U.S.C. § 1332(a).

## II.

We review summary judgment de novo, and we apply the same standard as the district court. *Nickell v. Beau View of Biloxi, L.L.C.*, 636 F.3d 752, 754 (5th Cir. 2011). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "[I]n this

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diversity-jurisdiction case, Texas law applies to . . . question[s] of substantive law.” *Antero Res., Corp. v. C&R Downhole Drilling Inc.*, 85 F.4th 741, 746 (5th Cir. 2023).

### III.

Senechal challenges summary judgment on his extracontractual bad faith claims—under Chapter 541 of the Texas Insurance Code and under the common law—and his claims for violations of the TPPCA (Chapter 542 claims).

#### A.

We first address whether summary judgment on Senechal’s bad faith claims—those brought under Chapter 541 of the Insurance Code and in tort—was appropriate. Senechal argues the district court erred in concluding that “unless there is a separate identifiable injury that arose apart from the claimed damages,” the plaintiff cannot recover damages for extracontractual bad faith claims after his insurer has paid the appraisal award and all necessary interest. Senechal contends that Allstate’s payment (and Senechal’s acceptance) of the appraisal award does not bar him from recovering actual damages for the improper withholding of policy benefits, even when the insurer subsequently paid those policy benefits with interest. Allstate argues that controlling Texas case law requires affirmance.

Allstate is correct. As we’ve explained in more depth in *Mirelez v. State Farm Lloyds*, \_\_\_ F.4th \_\_\_ (5th Cir. 2025), and *Navarra v. State Farm Lloyds*, No. 23-20582, 2024 WL 3174505 (5th Cir. June 25, 2024) (per curiam), the Texas Supreme Court’s decision in *Ortiz v. State Farm Lloyds*, 589 S.W.3d 127 (Tex. 2019), forecloses Senechal’s argument. The Texas Supreme Court held that when the only “actual damages” an insured seeks to recover are policy benefits that have since been paid through an appraisal award and interest an insured cannot recover for bad faith claims under

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Chapter 541 of the Insurance Code or under the common law. 589 S.W.3d at 135; *see also Biasatti v. GuideOne Nat'l Ins. Co.*, 601 S.W.3d 792, 794 (Tex. 2020) (per curiam) (reaffirming that “payment of an appraisal award forecloses an insurer’s liability for breach of contract and common-law and statutory bad faith unless the insured suffered an independent injury”). Because Senechal has presented no evidence that he suffered an independent injury caused by Allstate’s alleged delayed payment of benefits,<sup>1</sup> the district court did not err in granting summary judgment on these claims.<sup>2</sup>

### B.

Senechal also challenges the dismissal of his TPPCA claims. Senechal alleged that Allstate violated several subsections of Chapter 542— §§ 542.055, 542.056, and 542.058—when it delayed acknowledgement and full payment of his claim. Senechal argues that payment of an appraisal award and all potential interest does not, as a matter of law, bar recovery of

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<sup>1</sup> In his complaint, Senechal sought damages for mental anguish, in addition to actual damages in the form of policy benefits, for alleged violations of Chapter 541 of the Texas Insurance Code. For his breach of the common law duty of good faith and fair dealing claim, Senechal pleaded that he was entitled to “compensatory damages, including all forms of loss resulting from Allstate’s breach of duty, including additional costs, economic hardship, losses due to nonpayment of the amount Allstate owed, exemplary damages, and damages for emotional distress.” Senechal did not raise these additional claimed damages in his opposition to Allstate’s motion for summary judgment before the district court, nor has he raised them before us on appeal. He also has not argued that he suffered an independent injury because of Allstate’s allegedly delayed payment. Therefore, Senechal has abandoned any such claim for damages. *See Unida v. Levi Strauss & Co.*, 986 F.2d 970, 976 n.4 (5th Cir. 1993).

<sup>2</sup> Senechal’s reliance on *USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479 (Tex. 2018), *Lyda Swinerton Builders, Inc. v. Oklahoma Surety Co.*, 903 F.3d 435 (5th Cir. 2018), and *Vail v. Texas Farm Bureau Mutual Insurance Co.*, 754 S.W.2d 129, 136 (Tex. 1988) is misplaced for the reasons we explained in *Mirelez*, \_\_\_ F.4th \_\_\_, and *Navarra*, 2024 WL 3174505, at \*2. Namely, those three cases all involved policy benefits that the insurer had not paid to the insured, and as such, the insureds were still entitled to recover those policy benefits as damages.

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attorneys' fees under Chapter 542 of the Insurance Code.<sup>3</sup> Allstate agrees with that general proposition, but contends, relying upon a new argument on appeal, that summary judgment was appropriate on the facts of this case.

i.

When moving for summary judgment before the district court, Allstate acknowledged that an insured's payment of an appraisal award does not automatically foreclose a TPPCA claim. Allstate argued, however, that an insurer who violates the TPPCA, but then pays the full interest owed, may be entitled to summary judgment under Chapter 542A of the Insurance Code.<sup>4</sup> Pursuant to the mathematical formula set forth in § 542A.007 of the Code, which governs when attorneys' fees can be recovered for *certain* types of TPPCA claims, Allstate argued that Senechal would not be entitled to any. In opposition, Senechal contended that Chapter 542A does not apply to this dispute because his claim did not arise from a force of nature.

In granting summary judgment for Allstate on Senechal's TPPCA claims, the district court made three interrelated holdings. First, the district court held that Allstate had fulfilled its obligations under the TPPCA by

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<sup>3</sup> It is unclear whether Senechal also challenges the denial of attorneys' fees for his extracontractual bad faith claims under Chapter 541, because the parties and the district court did, at times, discuss attorneys' fees collectively. Regardless, the district court properly denied attorneys' fees on Senechal's statutory bad faith claims. Section 541.152 of the Texas Insurance Code provides that a plaintiff who "prevails" in an action under Chapter 541 may obtain "actual damages, plus court costs and reasonable and necessary attorney's fees." TEX. INS. CODE § 541.152(a)(1). In *Ortiz*, the Texas Supreme Court held that a plaintiff may only recover attorneys' fees under § 541.152 if the insured had been awarded actual damages. 589 S.W.3d at 134 ("By the statute's terms, any award of attorney's fees or treble damages is premised on an award of underlying 'actual damages.'"). The district court correctly determined that because Senechal did not prevail on his statutory bad faith claims, he was not entitled to attorneys' fees.

<sup>4</sup> Chapter 542A is entitled "Certain Consumer Actions Related to Claims for Property Damage."

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promptly paying the appraisal award and interest in full. Next, the court concluded that summary judgment was appropriate, relying upon two district court opinions, *White v. Allstate*<sup>5</sup> and *Trujillo v. Allstate*,<sup>6</sup> which concluded the insurer did not owe any attorneys' fees for TPPCA violations, pursuant to § 542A.007 of the Insurance Code. Last, the court concluded that no attorneys' fees were owed in the case because "the appraisal award fully compensates the insured for their covered loss, leaving no remaining claim for which judgment could be awarded." Because we are unsure whether the court's conclusions all stem from Allstate's Chapter 542A argument or whether they are independent justifications for granting summary judgment on Senechal's TPPCA claims, we address them in turn.

ii.

Senechal is correct that Chapter 542A of the Insurance Code and its provision limiting attorneys' fees at § 542A.007 do not apply to his claim, which arose out of a broken water heater. Chapter 542A only applies to claims stemming from certain weather events. *See* TEX. INS. CODE § 542A.001(2)(C) (defining claim as arising from damages caused by "forces of nature"); *see also Kahlig Enters., Inc. v. Affiliated FM Ins. Co.*, No. 23-50144, 2024 WL 1554067, at \*4 (5th Cir. Apr. 10, 2024) ("Chapter 542A of the Texas Insurance Code applies to claims from certain weather events including hail and wind.").

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<sup>5</sup> *White v. Allstate Vehicle & Prop. Ins. Co.*, No. 6:19-CV-00066, 2021 WL 4311114 (S.D. Tex. Sept. 21, 2021).

<sup>6</sup> *Trujillo v. Allstate Vehicle & Prop. Ins. Co.*, No. CV H-19-3992, 2020 WL 6123131 (S.D. Tex. Aug. 20, 2020).

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Allstate has presented no evidence, nor even a theory, supporting a position that the broken water heater was caused by any weather condition.<sup>7</sup> To the extent that the district court concluded that Chapter 542A governs this dispute, evinced by its reliance on the district court decisions in *White* and *Trujillo*, summary judgment on that basis was error.

iii.

With that understanding, we turn to Chapter 542 of the Insurance Code and assess the effect of payment of an appraisal award on a TPPCA claim. The TPPCA is codified at Chapter 542.051 *et seq.* of the Texas Insurance Code. In his complaint, Senechal claimed that Allstate violated three provisions of the TPPCA, which govern insurers' obligations regarding prompt receipt, notice, and payment of claims. TEX. INS. CODE §§ 542.055, 542.056, and 542.058. The parties focus on § 542.058, which "provides that the insurer, upon receiving all requested information necessary to evaluate the claim, must pay the claim within 60 days." *Randel v. Travelers Lloyds of Tex. Ins. Co.*, 9 F.4th 264, 268 (5th Cir. 2021).

The TPPCA is silent as to the effect of the appraisal process, leading the Texas Supreme Court to conclude that neither invocation of the appraisal process nor eventual payment of an appraisal award exempts an insurer from deadlines or enforcement of the statute. *Barbara Techs. Corp. v. State Farm Lloyds*, 589 S.W.3d 806, 817 (Tex. 2019); *see also id.* at 819 ("Nothing in the TPPCA would excuse an insurer from liability for TPPCA damages if it was

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<sup>7</sup> Though Allstate does not concede that Chapter 542A does not apply to Senechal's claim, it has abandoned that argument on appeal. Nowhere in its brief does Allstate contend that a weather event caused the broken water heater; instead, Allstate concludes, in a footnote, that the record "does not establish that a force of nature did not cause the loss."

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liable under the terms of the policy but delayed payment beyond the applicable statutory deadline, regardless of use of the appraisal process.”).

If an insurer violates the TPPCA, § 542.060 provides that in addition to the amount of the claim, “the insurer is responsible for 18 percent interest through the date of payment and attorney’s fees.” *Randel*, 9 F.4th at 268. Unlike other provisions of the Insurance Code, § 542.060 requires neither an award for “actual damages” nor a judgment for an insured to recover attorneys’ fees. *See* TEX. INS. CODE § 542.060(a). Instead, attorneys’ fees, along with statutory interest, constitute the damages to which an insured is entitled when their insurer is “liable” for a TPPCA violation. *See Hinojos v. State Farm Lloyds*, 619 S.W.3d 651, 652 (Tex. 2021) (“If an insurer fails to comply with Chapter 542, then it is liable for statutory interest on the amount of the claim and attorney’s fees.”). The Texas Supreme Court has explained that an insurer is “liable” on a TPPCA claim when it “(1) has completed its investigation, evaluated the claim, and come to a determination to accept and pay the claim or some part of it; or (2) been adjudicated liable by a court or arbitration panel.” *Barbara Techs. Corp.*, 589 S.W.3d at 819.

In *Hinojos*, the Texas Supreme Court affirmed its prior holding that payment of an appraisal award does not absolve an insurer of TPPCA liability when an insurer “accepts a claim but pays only part of the amount it owes within the statutory deadline.” 619 S.W.3d at 653; *see also Alvarez v. State Farm Lloyds*, 601 S.W.3d 781, 783 (Tex. 2020) (per curiam) (reversing summary judgment because payment of the appraisal award does not defeat TPPCA liability). Our court later noted that a Texas appellate court “clarified that a pre-payment of interest” also does not eliminate an insured’s “ability to collect TPPCA damages, such as attorney’s fees.” *Rodriguez v. Safeco Ins. Co. of Ind.*, 73 F.4th 352, 354 (5th Cir. 2023) (citing *Tex. Fair Plan Ass’n v. Ahmed*, 654 S.W.3d 488, 490 (Tex. App. 2022)).

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To summarize, prompt payment of an appraisal award and statutory interest does not, as a matter of Texas law, absolve an insurer of TPPCA liability. Furthermore, no judgment of “actual damages” is required for an insured to recover attorneys’ fees for a violation of Chapter 542 of the Texas Insurance Code. Therefore, to the extent that the district court concluded that prompt payment of an appraisal award and statutory interest defeats TPPCA liability or that a judgment is required to recover attorneys’ fees for such a violation, the district court erred.

iv.

On appeal, Allstate largely has abandoned the arguments it made before the district court, no longer arguing that Chapter 542A applies to this dispute or that payment of the appraisal award and interest absolves it of liability under the TPPCA. Instead, Allstate argues that it is not liable under the TPPCA because Allstate’s timely initial payment “roughly corresponds” with the subsequent appraisal award, pursuant to our court’s decision in *Randel v. Travelers Lloyds of Texas Insurance Co.*, 9 F.4th 264, 269 (5th Cir. 2021).

Our court, interpreting the Texas Supreme Court’s decision in *Hinojos*, did hold that an insurer can avoid TPPCA liability if it makes a reasonable, initial timely payment that “roughly correspond[s]” with the amount ultimately owed—the appraisal amount. *Id.* at 269 (quoting *Hinojos*, 619 S.W.3d at 658). Allstate urges us to consider its “roughly corresponds” argument and affirm summary judgment on that basis, even though it was not “explicitly considered” by the district court. The district court could not have “explicitly considered” this argument because Allstate never raised it below. We will not decide in the first instance whether Allstate’s handling of Senechal’s claim violated Chapter 542 of the Texas Insurance Code, whether Allstate is liable for any such alleged violation, or whether Allstate’s initial

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payment “roughly corresponds” with the appraisal award under Texas state law. *See Colony Ins. Co. v. Wright on Behalf of Wrongful Death Beneficiaries of Wright*, 16 F.4th 1186, 1189 n.1 (5th Cir. 2021). The district court is better suited to address these issues in the first instance.

Because the district court erred in concluding that Allstate fulfilled its obligations under the TPPCA by paying the appraisal award and interest, we vacate summary judgment as to Senechal’s TPPCA claims.

\* \* \*

For the foregoing reasons, we AFFIRM summary judgment on Senechal’s Chapter 541 and common-law tort claims, VACATE summary judgment on Senechal’s TPPCA claims, and REMAND for further proceedings consistent with this opinion.