No. 23-0534

In the Supreme Court of Texas

Mario Rodriguez,
Appellant,

v.

Safeco Insurance Company of Indiana,
Appellee.

Certified Question from the
U.S. Court of Appeals for the Fifth Circuit
Cause No. 22-1170

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN TORT REFORM ASSOCIATION, AND TEXANS FOR LAWSUIT REFORM AS AMICI CURIAE SUPPORTING APPELLEE

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INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United State of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The Chamber regularly files amicus curiae brief in cases, like this one, that raise issues of concern to the nation's business community.

The American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus curiae briefs in cases involving important liability issues.

Texans for Lawsuit Reform ("TLR") is a volunteer-led organization founded in 1994 to help foster and maintain a system that achieves a fair, merits-based resolution of civil disputes, in a quick and efficient manner, so as to encourage economic development and job creation in Texas for the benefit of all Texans. Thousands of individuals—living in towns and cities across Texas and representing virtually all of Texas's trades, businesses and professions—support TLR's mission. TLR has no direct or indirect financial

interest in this matter. During the 2017 regular session of the Texas Legislature, TLR was the primary outside advocate for passage of House Bill 1774, now codified as Texas Insurance Code chapter 542A. TLR's interest in the matter in which this brief is filed is in the proper interpretation and application of a law it helped craft and pass.

Amici write to explain the importance of construing the Texas Insurance Code according to the plain language selected by the Legislature, to ensure predictability for insurers and insureds alike. Amici further write to explain how artificially expanding the scope of Chapter 542A would undercut the purpose of that provision, and negatively impact insurers and policyholders alike, by blunting the effectiveness of the appraisal process, increasing frivolous litigation, and, in turn, driving up the cost of insurance.[1]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The question certified to this Court is resolved by the plain language of Chapter 542A of the Texas Insurance Code. That provision tethers attorney's fees for weather-related claims to the amount "***to be awarded in the judgment*** to the claimant for the claimant's claim under the insurance policy for damage to or loss of covered property." Tex. Ins. Code Ann. § 542A.007(a)(1)-(3) (emphasis added). An appraisal is not a judgment. And

[1] No counsel for a party authored this brief in whole or in part, and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Tex. R. App. P. 11(c).

policy benefits that have already been paid pursuant to the appraisal process cannot also "be awarded in the judgment." The upshot is that attorney's fees are not available where all conceivable claims under a policy have been paid pursuant to the appraisal process, because in that case any "judgment" "to be awarded" is necessarily zero.

The appellant in this case—like plaintiffs in the dozens of near-identical cases throughout Texas state and federal courts—fails to confront this unambiguous language, instead halfheartedly suggesting that the Legislature perhaps intended the term "judgment" to *encompass* appraisals. But this Court "presume[s] the Legislature chose statutory language deliberately and purposefully," *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 390 (Tex. 2014), and an appraisal is indisputably not a "judgment," *see Barbara Techs. Corp. v. State Farm Lloyd's*, 589 S.W.3d 806, 820-22 (Tex. 2019).

Awarding attorney's fees where the Legislature plainly precluded them is not only improper as a matter of statutory construction, it would undermine the intent of the 2017 Amendments to the Texas Insurance Code: to cut down on abusive "hailstorm" lawsuits in the wake of a ***1,400%*** increase in such claims over a 5-year period. *Pearson v. Allstate Fire & Cas. Ins. Co.*, No. 19-CV-693-BK, 2020 WL 264107, at *4 n.3 (N.D. Tex. Jan. 17, 2020); *see also* House Research Org., Bill Analysis of H.B. 1774, 85th Leg., R.S., at 4 (2017), bit.ly/48loRpd. The Legislature sought to achieve this goal by decreasing the availability of attorney's fees for weather-related property-damage suits against insurers. *White v. Allstate Vehicle & Prop. Ins. Co.*, No. 6:19-CV-00066,

2021 WL 4311114, at *9 (S.D. Tex. Sept. 21, 2021); *see also* Elizabeth Von Kreisler & Suzette E. Selden, *Annual Survey of Texas Insurance Law*, 21 J. Consumer & Com. L. 54, 55 (2018) (acknowledging that the 2017 Amendments "limit damages and attorney's fees in property damage claims").

Chapter 542A carries only one plausible meaning: Attorney's fees are unavailable unless and until a claimant secures a "judgment" for a property-damage claim under his policy. And, as the Fort Worth Court of Appeals aptly put it, "to the extent that the Legislature's continuing efforts to ameliorate the seeming 'forever war' between insurance companies and their insureds might remain unsatisfying, that's a job for the Legislature, not the courts when construing a straightforward statute." *Kester v. State Farm Lloyds*, No. 02-22-00267-CV, 2023 WL 4359790, at *7 (Tex. App.—Fort Worth, July 6, 2023).

ARGUMENT

I. The Plain Language of Chapter 542A Forecloses Attorney's Fees Where The "Amount to Be Awarded in The Judgment" is Zero.

This Court has long adhered to the principle that the "foremost task of legal interpretation" is to divine "what the law *is*, not what the interpreter *wishes* it to be." *BankDirect Cap. Fin., LLC v. Plasma Fab, LLC*, 519 S.W.3d 76, 78 (Tex. 2017) (emphasis in original). That task is straightforward where, as here, the statutory text is clear. Because Chapter 542A expressly predicates attorney's fees on a "judgment" "to be awarded," such fees are not available

where a claimant does not recover "for damage to or loss of covered property" under his policy pursuant to a "judgment."

A. Interpreting Insurance Statutes According to Their Plain Meaning Ensures Stability and Predictability.

While "[t]he role of the judicial branch in our government is important, . . . that role is not to second-guess the policy choices that inform our statutes," but simply "to interpret those statutes in a manner that effectuates the Legislature's intent." *In re Allen*, 366 S.W.3d 696, 708 (Tex. 2012) (citation omitted). "To discern that intent," this Court "begin[s] with the statute's words." *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) (citing Tex. Gov't Code § 312.003). "[U]nless a statute is ambiguous, [this Court] must follow the clear language of the statute," *RepublicBank Dallas, N.A. v. Interkal, Inc*., 691 S.W.2d 605, 607 (Tex. 1985). In so doing, this Court "presume[s] that the Legislature chooses a statute's language with care, including each word chosen for a purpose, while purposefully omitting words not chosen." *TGS-NOPEC Geophysical Co.*, 340 S.W.3d at 439 (citing *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008)).

"If a statute is clear and unambiguous, we apply its words according to their common meaning without resort to rules of construction or extrinsic aids." *Maxim Crane Works, L.P. v. Zurich Am. Ins. Co.*, 642 S.W.3d 551, 557 (Tex. 2022) (citation omitted). Courts may "not read words into a statute to make it . . . more reasonable," *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 52 (Tex. 2014), nor "by implication enlarge the meaning of any word in

the statute beyond its ordinary meaning," *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994).

This straightforward approach ensures "that ordinary citizens can rely on [a] statute's language to mean what it plainly says." *PHI, Inc. v. Tex. Juv. Just. Dep't*, 593 S.W.3d 296, 303 (Tex. 2019) (citation omitted). This is particularly important in the insurance context. Insured parties benefit from understanding the relative costs and benefits of resolving any disagreements out of court or choosing instead to initiate legal action. And insurers faced with voluminous lawsuits benefit from the ability to evaluate the relative total costs to defend or settle frivolous lawsuits. Indeed, "[i]nsureds and insurers alike benefit from predictability and certainty in the law." *Excess Underwriters at Lloyd's, London v. Frank's Casing*, 246 S.W.3d 42, 76 (Tex. 2008) (Hecht, J., dissenting). Adherence to the plain language of unambiguous statutes furthers this predictability.

B. Chapter 542A Ties Attorney's Fees to a "Judgment," Not to an Appraisal or Other Dispute Resolution Mechanism.

Chapter 542A unambiguously tethers attorney's fees "to the amount to be awarded a claimant in the judgment" for property-damage claims under his policy.[2] Section 542.007 states that attorney's fees are limited to the least

[2] It is undisputed that Chapter 542A applies here. *See, e.g.*, Br. of Appellant, at 11-12. Section 542A.001 of the Texas Insurance Code defines "claim" as a first-party claim "by an insured" arising "from damage to or loss of covered property caused . . . by forces of nature." Section 542A.002 states that "this

of the following three amounts: the amount "supported at trial," the amount "that may be awarded to the claimant under other applicable law," and the amount calculated by:

> (A) dividing ***the amount to be awarded in the judgment*** to the claimant ***for the claimant's claim under the insurance policy*** for damage to or loss of covered property by the amount alleged to be owed on the claim for that damage or loss in a notice given under this chapter; and
>
> (B) multiplying the amount calculated under Paragraph (A) by the total amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action.

Tex. Ins. Code Ann. § 542A.007(a)(1)–(3) (emphasis added). When this third amount (or either of the other two amounts) is zero, no attorney's fees can be awarded.

1. An award of attorney's fees requires a "judgment."

The plain language of this provision predicates any award of attorney's fees for claims under Chapter 542A on a nonzero ***judgment***. A judgment is "a court's final determination of the rights and obligations of the parties in a

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chapter applies to an action on a claim against an insurer," including for "breach of contract," or under "Subchapter B, Chapter 542 [the TPPCA]." Here, Appellant filed suit against Appellee alleging breach of contract and violation of Chapter 542 of the Texas Insurance Code in connection with his claim for storm damage to covered property. Br. of Appellee, at 3-5. So Chapter 542A applies.

case." *Judgment*, Black's Law Dictionary (11th ed. 2019); *see also Judgment*, Merriam-Webster's Dictionary ("a formal decision given by a court"); *U.S. Denro Steels, Inc. v. Lieck*, 342 S.W.3d 677, 684 (Tex. App.—Hous. [14th Dist.] 2011) ("[T]he word *judgment* has been construed by Texas courts" to mean "the final consideration and determination of a court of competent jurisdiction on the matters submitted to it." (quoting *Speer v. Stover*, 711 S.W.2d 730, 734 (Tex. App.—San Antonio 1986, no writ)). And the "'to be awarded' language is forward-looking; it contemplates the provisions of a judgment not yet in existence." *Kester*, 2022 WL 18034525, at 17-18; *see also, e.g.*, Tex. Civ. Prac. & Rem. Code § 42.004(g) ("If litigation costs are *to be awarded* against a claimant, those litigation costs shall be awarded to the defendant *in the judgment* as an offset against the claimant's recovery from that defendant.") (emphasis added).

In short, the plain language of the statute anchors the right to attorney's fees in a future judgment—not to any payment made to a claimant at an earlier point in time. When the "amount to be awarded in the judgment to the claimant" is zero—whether because the parties settled, because the claimant invoked appraisal and accepted payment, or for any other reason—the numerator of the attorney's fee equation is zero. *See* Tex. Ins. Code Ann. § 542A.007(a)(1)–(3). So any attorney's fees are also necessarily zero.

2. An appraisal award is not a "judgment."

Because there is neither a statutorily provided definition of the term "judgment" in Chapter 542A nor anything ambiguous about the term, this

Court must "presume that the Legislature meant to use the ordinary meaning" of the term. *Gulf Coast Ctr. v. Curry*, 658 S.W.3d 281, 287 (Tex. 2022). Relevant here, the "ordinary meaning" of "judgment" does not extend to a payment made pursuant to an appraisal. An "appraisal" is "[t]he determination of what constitutes a fair price; valuation; estimation of worth." *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 890 (Tex. 2009) (citation omitted). In the insurance context, this Court has described the appraisal process as "a contractual mechanism to resolve a dispute" between parties. *Barbara Techs. Corp.*, 589 S.W.3d at 827; *Appraisal*, Black's Law Dictionary (11th ed. 2019) ("The determination of what constitutes a fair price for something or how its condition can be fairly stated; the act of assessing the worth, value, or condition of something.").

While an important tool in the resolution of insurance claims, "appraisals do not supplant the judicial process." *Tex. Windstorm Ins. Ass'n v. Dickinson Indep. Sch. Dist.*, 561 S.W.3d 263, 276 (Tex. App.—Hous. [14th Dist.] 2018). Unlike a final judgment announcing the rights and obligations of the parties, "[p]ayment in accordance with an appraisal is neither an acknowledgment of liability nor a determination of liability under the policy for purposes of TPPCA damages." *Barbara Techs. Corp.*, 589 S.W.3d at 820. Indeed, this Court has expressly acknowledged that the appraisal process "provid[es] the parties *an alternative to seeking a judgment* to resolve a dispute as to the value of the claims." *Id.* at 822–23 (emphasis added); *see also Sec. Nat. Ins. Co. v. Waloon Inv., Inc.*, 384 S.W.3d 901, 905 (Tex. App.—Hous. [14th Dist.] 2012)

(appraisals "aim to submit a dispute to a third party for resolution without recourse to the courts"). This alternative appears nowhere in Chapter 542A.

3. Courts cannot enlarge the definition of "judgment" to reach a policy result the Legislature rejected.

The insured in this case presses numerous policy-focused arguments urging this Court to, in essence, expand the meaning of the term "judgment" for a policy-driven outcome. But courts may "not read words into a statute," *Union Carbide Corp.*, 438 S.W.3d at 52, nor "enlarge the meaning" of statutory language to reach a preferred result, *Sorokolit*, 889 S.W.2d at 241. "Even if the Court agreed with [these] underlying policy concerns, such considerations are best addressed by the relevant law-making body—here, the Texas Legislature—and not by this Court." *Morakabian v. Allstate Vehicle & Prop. Ins. Co.*, No. 4:21-CV-100-SDJ, 2023 WL 2712481, at *4 (E.D. Tex. Mar. 30, 2023). This Court's role is instead to presume that the Legislature chose the language "to be awarded in the judgment," Tex. Ins. Code Ann. § 542A.007(a), "for a purpose, while purposefully omitting words not chosen"—such as appraisal. *TGS-NOPEC Geophysical Co.*, 340 S.W.3d at 439.

If the Legislature had intended attorney's fees to be available to insurance claimants in the wake of an appraisal or other resolution, it could have specified mechanisms in *addition* to a judgment that could support an award of attorney's fees. The fact that it did not confirms the Legislature rejected the policy considerations Appellant now presses.

C. The Vast Majority of Courts Have Properly Interpreted Chapter 542A in Accordance With its Plain Language.

The two Texas appellate courts to have considered this statute, along with the vast majority of federal district courts, have properly interpreted Chapter 542A according to its plain language. Summed up, as far as amici can tell, at least a dozen courts have read the statute to foreclose attorney's fees on the facts this case presents, whereas only a few have taken the position Appellant advocates. That lopsided score is strong evidence that Appellee has the better argument.

The Dallas Court of Appeals, in *Rosales v. Allstate Vehicle & Prop. Ins*. Co., 672 S.W.3d 146 (Tex. App.—Dallas, 2023, pet. filed), held that where an insurer "has already paid the appraisal award, which is binding as to the maximum amount of the damage to or loss of [a claimant] property, . . . there remains no 'amount *to be* awarded in the judgment' to [a claimant] for his 'claim under the insurance policy for damage to or loss of covered property' in the attorney's fees formula in 542A.007(a)(3)(A)." *Id.* at 152.[3] "Because the amount *to be* awarded in a TPPCA judgment for a covered loss is presently zero dollars, and because the amount of attorney's fees is a multiple of that amount," that court explained, "Chapter 542A's formula must result in an award of zero attorney's fees." *Id*. The Fort Worth Court of Appeals recently agreed, explaining that it would "join the Dallas court" and "stay[ ] in [its]

[3] *Rosales* is also before this Court on petition for review, filed by the same attorney who represents the Appellant in this case. *See* No. 23-0713.

lane" by relying on the unambiguous language of the provision. *Kester*, 2023 WL 4359790, at *4.

Most federal district courts in Texas have reached the same conclusion as their state-court colleagues, with many expressly rejecting atextual, policy-focused interpretations similar to those Appellant offers here. *See, e.g.*, *Morakabian v. Allstate Vehicle & Prop. Ins. Co.*, No. 4:21-CV-100-SDJ, 2023 WL 2712481, at *5 (E.D. Tex. Mar. 30, 2023); *Arnold v. State Farm Lloyds*, No. CV H-22-3044, 2023 WL 2457523, at *5 (S.D. Tex. Mar. 10, 2023); *Kahlig Enters., Inc. v. Affiliated FM Ins. Co.*, No. SA-20-CV-01091-XR, 2023 WL 1141876, at *8 (W.D. Tex. Jan. 30, 2023); *Royal Hosp. Corp. v. Underwriters at Lloyd's London*, No. 3:18-CV-00102, 2022 WL 17828980, at *10 (S.D. Tex. Nov. 14, 2022); *Atkinson v. Meridian Sec. Ins. Co.*, No. SA-21-CV-00723-XR, 2022 WL 3655323, at *8 (W.D. Tex. Aug. 24, 2022); *White v. Allstate Vehicle & Prop. Ins. Co.*, No. 6:19-cv-00066, 2021 WL 4311114, at *10 (S.D. Tex. Sept. 21, 2021); *Trujillo v. Allstate Vehicle & Prop. Ins. Co.*, No. H-19-3992, 2020 WL 6123131, at *6 (S.D. Tex. Aug. 20, 2020); *Pearson v. Allstate Fire & Cas. Ins. Co.*, No. 19-CV-693-BK, 2020 WL 264107, at *4 (N.D. Tex. Jan. 17, 2020).

The few courts to have come out the other way have impermissibly ignored the statutory text in favor of conjecture or supposition. Take, for example, *Gonzalez v. Allstate Fire & Casualty Insurance Co.*, No. SA-18-CV-283-OLG, 2019 WL 13082120 (W.D. Tex. Dec. 2, 2019). That court relied not on text, but on the unfounded concern that "insurers could systematically avoid liability for TPPCA attorney's fees by" paying partial claims and belatedly

invoking appraisal. *Id*. at *6. But that is exactly the sort of policy-before-text approach this Court has consistently rejected. Another federal court siding with the policyholder has made the same error. *See Martinez v. Allstate Vehicle & Prop. Ins. Co.*, No. 4:19-CV-2975, 2020 WL 6887753, at *2 (S.D. Tex. Nov. 20, 2020) (suggesting that Allstate could have "paid Martinez interest for a tactical reason: to moot her TPPCA claim and thereby avoid paying her attorney's fees"). No court to diverge from the majority has directly confronted the plain language of Chapter 542A, opting instead to assume the role of the Legislature and hypothesize potential misuses of the enacted provision. That is not how courts are to interpret clear statutory text.

Accordingly, this Court should dispel any remaining confusion, confirming that where, as here, the language of a statute is straightforward, courts need look no further.

II. Limiting Attorney's Fees Supports Critical Policy Considerations.

Because "the text [of Chapter 542A] is unambiguous," this Court may "take the Legislature at its word" rather than "rummage around in legislative minutiae." *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 652 n.4 (Tex. 2006). Should there be any question, though, the policy concerns underlying the 2017 Amendments to the Texas Insurance Code are wholly consistent with the plain text of Chapter 542A.

Between 2012 and 2017, Texas insurers saw an exponential increase in weather-related property-damage litigation. During this time, "[t]he

frequency of weather-related lawsuits against property insurers ha[d] risen ***1,400 percent***." House Research Org., Bill Analysis of H.B. 1774, 85th Leg., R.S., at 4 (2017) (emphasis added). Unfortunately, this drastic increase was motivated, in large part, "by profit, not actual damages to real property," *id*., and was accompanied by a corresponding increase in enterprising plaintiffs' attorneys "canvass[ing] consumers in post-[weather] event areas to solicit business." Tex. Sen. Research Cen. Bill Analysis of S.B. 10, 85th Leg., R.S., at 1 (2017), https://bit.ly/44raA7q. The Senate Research Center noted, in analyzing a companion bill, that recent "hailstorms have resulted in tens of thousands of claims filed against property and casualty insurers statewide, resulting in mass litigation" and in attorneys increasingly "applying mass tort models to simple property damage claims." *Id*.

To mitigate this trend, on September 1, 2017, the Legislature enacted "significant changes to the Texas Insurance Code . . . 'aimed at limiting damages for losses' caused by natural disasters." *White v. Allstate Vehicle & Prop. Ins. Co.*, 2021 WL 4311114, at *9 (S.D. Tex. Sept. 21, 2021) (citation omitted); *see also Rosales*, 672 S.W.3d at 150 (2017 changes "aimed at limiting TPPCA damages and attorney's fees in cases of natural disaster" (quoting *Morakabian*, 2022 WL 17501024, at *5)). The Amendments (1) reduced the Texas Prompt Payment of Claims Act interest rate from 18 percent to a rate equal to five percent plus the amount of the current interest rate as defined by the Texas Finance Code "[i]n an action to which Chapter 542A applies," Tex. Ins. Code § 542.060(a), (c); and (2) limited the availability of attorney's fees for

disputes resolved out of court, Tex. Ins. Code § 542A.007(a)(3)(A); *see also* Amy Elizabeth Stewart, *2017 Insurance Law Update*, 83 The Advoc. (Texas) 7, 2 (2018) ("[P]opularly referred to as the 'hailstorm' bill," Chapter 542A "limits a policyholder's ability to recover its attorney's fees for prosecuting such a claim and reduces the interest recoverable in connection with delayed payments."). The upshot of these changes was to decrease the profitability of weather-related property-damage lawsuits and any associated incentive for claimants or their attorneys to inflate demands or initiate trivial litigation regarding the same.

Altering the scope of Chapter 542A beyond its plain language would undercut the purpose of the 2017 Amendments, increasing ancillary litigation over attorney's fees even where parties resolve property-damage claims out of court. Indeed, under Appellant's reading, insured parties are encouraged to proceed with legal action even where all possible policy benefits and interest have *already* been paid pursuant to an appraisal award, in hopes of recovering attorney's fees—in other words, this overly expansive interpretation would incentivize rather than reduce the precise kind of trivial insurance-coverage litigation that Chapter 542A was enacted to combat.

Appellant's read would also blunt the effectiveness of the appraisal process, which often inures to the benefit of both insurers and insureds. Appraisal is "an important tool in the insurance claim context, curbing costs and adding efficiency in resolving insurance claims." *Barbara Techs. Corp.*, 589 S.W.3d at 814; *see also In re Universal Underwriters of Tex. Ins.*, 345 S.W.3d

404, 407 (Tex. 2011) (orig. proceeding) ("Appraisals can provide a less expensive, more efficient alternative to litigation." (citation omitted)). Any cost and efficiency savings are mooted, however, when plaintiffs invoke appraisal and then forge ahead with lawsuits attempting to prove up attorney's fees, whether during the appraisal process,[4] or after an appraisal award has been paid.[5] Likewise, the benefits of appraisal are reduced where plaintiffs invoke appraisal only *after* bringing suit, and after the parties have expended significant time and resources in litigation.[6]

In enacting the 2017 Amendments to the Texas Insurance Code, the Legislature recognized the broad-scale benefits of encouraging the resolution of insurance disputes outside of the courtroom where possible. It is no secret that drastic increases in recent weather-related claims have begun to affect

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[4] *See e.g.*, *Jones v. State Farm Lloyds*, No. 3:22-cv-1256 (N.D. Tex.) (plaintiff filed suit during appraisal process); *Radcliff v. Allstate Tex. Lloyd's*, No. 4:21-cv-2041 (S.D. Tex.) (same).

[5] *See e.g.*, *Kester*, 2023 WL 4359790, at **3-5.

[6] The parties' briefs confirm that, in this case, the insurer invoked appraisal. As laid out in detail in Respondent's Amended Response to Petition for Review in a parallel case *Rosales v. Allstate Vehicle & Prop. Ins. Co.*, No. 23-0713—also before this Court on petition for review—the inverse is often true. *See* Amended Resp. to Pet. for Rev., filed Sept. 7, 2023, Appendix at 58-65 (discussing *Gonzalez v. Allstate Fire and Cas. Ins. Co.*, No. 5:18- CV-283 (W.D. Tex.) (insured invoking appraisal 8 months after filing suit); *Mancha v. Allstate Tex. Lloyds*, No. 5:18-cv-524 (W.D. Tex.) (insured invoking appraisal 11 months after filing suit)).

policyholders' premiums. *See, e.g.*, Forbes, *Home Insurance Outlook For 2023*, bit.ly/48hSacw. Relatedly, the costs of tort litigation in our State—passed through corporations to consumers in the form of increased pricing—continue to increase. *See, e.g.*, U.S. Chamber of Commerce, Institute for Legal Reform, Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System, bit.ly/3LnyJVM, at 14-15 (Nov. 2022). The Legislature sought to control and slow, rather than accelerate, these costs, reducing any perverse incentive for attorneys to bring weather-related lawsuits, yet ensuring that fees remain available where an insured party is awarded a judgment for a "claim under the insurance policy for damage to or loss of covered property." Tex. Ins. Code. 542A.007(a)(3)(A).

CONCLUSION

Because an insurer's payment of the full appraisal award plus any possible statutory interest precludes recovery of attorney's fees in an action under Chapter 542A, the Court should answer the certified question "yes."

Respectfully submitted.

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