

SUPREME COURT ALERT: INSURANCE

A few days ago, the Supreme Court of Texas handed down a devastating decision that threatens every property owner in our state. The Court held in **Rodriguez v. Safeco (case no. 23-0534)** that policyholders with covered property insurance claims caused by “forces of nature” cannot recover their attorney fees if the insurance company eventually pays an appraisal award and interest. This amounts to a “get out of jail” card for insurance companies that abuse their policyholders, *gutting your ability to be made whole if your carrier low balls or slow pays you.*

WHAT THE COURT DID

The Court interpreted a bad bill rammed through the Texas Legislature by insurance lobbyists in 2017. We fought against this power grab and called it the “**Blue Tarp Bill**” because we predicted it would make it harder for policyholders to get their homes repaired by their insurance companies after a storm. The Blue Tarp Bill slashed the amount of penalty interest insurers have to pay if they drag their feet and required policyholders to send an additional detailed notice letter to the insurance company before suing them, driving up costs.

In this case, the Court interpreted a section of the bill that involved attorney’s fees and the information contained in the notice letter. Writing for the Court, **Justice Jimmy Blacklock** purported to read the “plain language” of the statute and held an insurer’s payment of a full appraisal award plus statutory interest *prevents recovery of attorney’s fees by the policyholder*. The Supreme Court is not supposed to interpret statutes in a way that would lead to an “absurd” result. Somehow, zeroing out the recovery of attorney’s fees for many in a section of the law entitled “Award of Attorney’s Fees” is not absurd in this Court’s eyes.

HOW IT HURTS YOU

Because of the Rodriguez decision, policyholders can expect to encounter more claims denials, low ball offers, and foot dragging when they suffer property damage after a storm. Insurers have less incentive now to pay claims fully and promptly because they know the appraisal process can be gamed later to help wash away their sins. Appraisal is only supposed to resolve questions about the correct amount of a loss; however, under this decision, insurance companies can use it as both a sword and a shield against policyholders.

Insurers are enabled to pay just a small portion of the disputed claim up front, drag out the claim, invoke appraisal later, and get off the hook by paying merely the difference and any interest owed. Many policyholders will be ground up by the delays and the costs of fighting. They will give up and be forced to take pennies on the dollar from their insurance company. In this event, insurers will receive 100% of the premiums paid by the policyholder, but the policyholder will only receive a fraction of the policy benefits owed.

Those who persist in seeking full payment will still fall short. Because policyholders cannot recover their attorney’s fees from the insurance company, they will have to come out of their own pocket to pay their lawyer, meaning they will never be made whole for the insurance company’s wrongful delay of their claim. *The practical effect is many attorneys will not be able to help policyholders with deserving claims and individual property owners will have to take on insurance companies – and their armies of lawyers – without the benefit of their own legal counsel.*

WHAT MUST HAPPEN NEXT

The Supreme Court said in its opinion: “If the Legislature does not like the consequences of the instructions it has given the courts, it obviously has every right to change them.” The Texas Legislature should do exactly that when it reconvenes in 2025 by changing our laws to help policyholders. **Property owners are already reeling** from insurance premium hikes and reduced coverage. Now the Supreme Court has exacerbated the crisis by ruling policyholders can’t recover their attorney’s fees if insurance companies game the system.

It’s high time for the Texas Legislature to protect policyholders by recognizing the Blue Tarp Bill for what it is – a giveaway for insurance companies – and striking it from our laws. Strong laws are required to force the insurance industry to treat policyholders fairly. Without them, “insurance” is little more than legalized theft.

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