COX P.L.L.C. NEWS

OUR INSURANCE COVERAGE TEAM UPDATES OUR CLIENTS ABOUT TEXAS INSURANCE LAWS AND NOTEWORTHY DECISIONS FROM TEXAS STATE AND FEDERAL COURTS.

TEXAS INSURANCE LAW UPDATE

SECOND QUARTER 2026

THERE WERE SEVERAL NOTEWORTHY DECISIONS AND RULINGS FROM TEXAS STATE AND FEDERAL COURTS HANDED DOWN IN THE SECOND QUARTER OF 2026 THAT MAY BE RELEVANT TO YOUR CLAIMS HANDLING. DURING THE SECOND QUARTER OF 2026, THE COURTS ADDRESSED VARIOUS COVERAGE ISSUES INCLUDING:

- Whether extrinsic evidence is allowed for purposes of determining a carrier's duty to defend.
- Viability of contractual indemnity and additional insured obligations.
- The burden of proof for proving up application of an exclusion in an insurance policy.
- When extra-contractual claims are ripe in a uim case.
- Whether an insured has a viable um/uim claim when there has been no "actual physical contact".
- Whether diversity of jurisdiction exists when plaintiff claims less than $75,000 in damages in response to removal but alleges damages in excess of $75,000.
- Who bears the burden of proof with respect to the concurrent causation doctrine.
- What are the conditions precedent to triggering an appraisal clause.
- Whether Chapter 542 of the Texas Insurance Code applies to third-party claimants.
- Whether a state-law negligent hiring claim against a transportation broker is preempted by the federal aviation administration authorization act.
- Whether settling defendants can pursue contractual proportional indemnity claims against non-settling parties following settlement.

If you would like to discuss any of the cases in this report in more detail, please reach out to one of our team members at Cox PLLC

CGL, UMBRELLA, AND EXCESS COVERAGE OPINIONS

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS LOOKED TO EXTRINSIC EVIDENCE TO DETERMINE THAT A SILICA EXCLUSION APPLIED TO NEGATE A DUTY TO DEFEND[1]

This matter involved whether FCCI Insurance Company ("FCCI") was obligated to provide Easy Mix Concrete, LLC ("Easy Mix") with a legal defense in lawsuits brought by homeowners wherein it was alleged that swimming pools sustained damage from "concrete cancer." The coverage issue was whether the "silica exclusion" applied to negate the duty to defend where some lawsuits only alleged that the damage to the pools was caused by an alkali-aggregate reaction ("AAR"), rather than from an alkali-silica reaction ("ASR"). In this regard, AAR is an umbrella category of reactions in concrete that includes both alkali-carbonate reaction ("ACR") and ASR. The distinction between AAR and ASR was relevant to this litigation – namely, the specific role of silica in causing the cracking or damage to the pools.

The CGL policies issued by FCCI included a silica exclusion which barred coverage for property damage arising in whole or in part from the presence of silica, with "silica" defined as:

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

FCCI contended that the policy was unambiguous and that the pleadings in the underlying lawsuit alleged facts that the damage to the pools was caused by ASR and, as such, the silica exclusion applied to preclude a duty to defend. Easy Mix took the position that the underlying lawsuits (*consolidated into a multi-district litigation docket*) identify other possible bases for liability beyond silica and that structural damage from ASR goes beyond the ordinary understanding of harms from silica exposure and hence a duty to defend exists.

In this regard, many of the lawsuits at issue alleged that "the pool exhibited signs of alkali-aggregate reaction" – i.e., AAR – and did not specifically allege damage because of ASR. Other lawsuits alleged that the cracks and defects in the pool were likely caused by ASR or from the formation of AAR in the shotcrete from Easy Mix, and some claimed that the cracks were because of insufficient rebar or steel support. Easy Mix contended that as the pleadings did not allege that silica or ASR was the only potential cause of the cracks and damage to the pools, the "silica exclusion" did not apply to negate the duty to defend. FCCI argued that the lack of specific allegations as to the cause of the damage amounted to a gap in the pleadings and allowed the court to consider extrinsic evidence.

The Western District Court agreed with FCCI that the Monroe exception applied initially noting that the involvement of ASR in the pleadings created a "gap" as to whether a duty to defend existed. The extrinsic evidence relied on by the court was a filing by Easy Mix regarding a "Court Ordered List of Common Issues," wherein Easy Mix asserted that "[a]ll claims allege 'ASR' or 'Concrete Cancer' as cause of the cracking." The court held that the extrinsic evidence:

> meets the *Monroe* standard. It (1) goes solely to the issue of coverage and does not overlap with the merits of liability, because it concerns only what the alleged cause was in the underlying suits, (2) does not contradict facts alleged in the pleadings, which all suggested either ASR or AAR-which, again, can be ASR-as a possible cause, and (3) conclusively establishes that ASR is, in Easy Mix's understanding, alleged in all suits, because the statement is an assertion of that fact by Easy Mix to the MDL pretrial court. As a result, the Court can consider Easy Mix's statement made in the MDL, and, on the basis of those statements, concludes that each underlying suit involves ASR. Because each suit alleges ASR as at least a cause of the alleged damage, those suits fall within the Silica Exclusion.

The district court held that FCCI did not owe Easy Mix a legal defense but did not decide whether a duty to indemnify existed on the basis that such a determination could not be made until the actual liability facts as to the cause of the damage to the pools were determined.

THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS FINDS NO BREACH OF CONTRACTUAL INDEMNITY AND ADDITIONAL INSURED OBLIGATIONS[2]

Sentry Insurance Company ("Sentry") insured 5021 Canal, LLC and Tony's Wholesale Supply Company d/b/a Tony's Bar Supply (collectively, "Canal"). In 2021, Canal hired CIVE, Inc. ("CIVE") to buildout the interior of a Houston warehouse space owned and operated by Canal. While performing the work under a Contractor Agreement, CIVE employee, Carlos Lugo ("Lugo"), was on the roof as part of the warehouse conversion into a retail store when he fell through a skylight onto the concrete floor below, sustaining fatal injuries.

Following the incident, Lugo's surviving daughters (the "Lugo Heirs") filed suit against Canal alleging negligence, premises liability, and gross negligence. After Canal moved to designate CIVE as a responsible third party, the Lugo Heirs amended their petition to include CIVE as a named defendant. Ultimately, Canal settled with the Lugo Heirs and Sentry, as the subrogee of Canal, demanded reimbursement from CIVE pursuant to an indemnity provision in the Contract Agreement.

The indemnity provision at issue stated that CIVE was to defend, indemnify and hold Canal harmless from and against all claims arising out of the performance of the work at the warehouse, including bodily injury to an employee of CIVE, "to the extent caused by the negligent acts or omissions of [CIVE] . . . regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder." The district court held that the phrase "caused in part by a party indemnified hereunder" failed the express negligence test as it did not state CIVE was to indemnify Canal for Canal's sole negligence, joint negligence, or concurrent negligence. Thus, there were no contractual indemnity obligations owed by Cive to Canal.

Sentry also contended that CIVE had breached the Contractor Agreement as it failed to have Canal included as an additional insured on its CGL policy. The court disagreed in that the insurance obligation in the Contractor Agreement was "to provide coverage for [CIVE's] obligations under [the indemnity provision]" and as the indemnity provision did not apply, CIVE was under no contractual requirement to name or include Canal as an additional insured. As such, the court held that Sentry could not recover the settlement amount and could not recover the attorneys' fees incurred in pursuing subrogation against CIVE.

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS HELD THAT THE CGL INSURER OWED A DUTY TO DEFEND AS THE INSURER FAILED TO ESTABLISH THAT THE "YOUR WORK" EXCLUSION APPLIED[3]

Daniel McCurtain ("McCurtain") brought suit against Jason Holdings, LLC, Jason Contracting & Repair, LLC (collectively, "Jason Defendants"), and Lone Star BuildBlock, LLC ("Lone Star") for construction defects and shoddy workmanship. Notably, McCurtain contracted with Lone Star for the construction of "a turnkey stem wall foundation of Insulated Concrete Forms ("ICF") for a home McCurtain was building." In the lawsuit, McCurtain alleged that although Jason Construction and Lone Star were wholly owned subsidiaries of Jason's Holdings, he contracted for Lone Star to perform the construction work and did not know that the work actually would be performed by the Jason Defendants.

Central Mutual Insurance Company ("Central") sought a declaration that it did not owe the Jason Defendants or Lone Star a legal defense (*Lone Star was later dismissed from the coverage suit when it declared for bankruptcy*). Central filed a motion for summary judgment on the basis that the "alleged defects do not involve property injured after construction" and hence is not "property damage" as defined by the CGL policy, or alternatively, the "damage to property" and the "damage to your work" exclusions applied to negate a duty to defend. The operative factual allegations were as follows:

> [T]he top of the concrete stem wall is uneven, inclusion of an additional block on the stem wall above the plate line, holes cut into the ICF [Insulated Concrete Forms] blocks after installation, steel embeds installed out of level, steel embeds not set at the same elevation in height, concrete door headers are sagging/bowed, stem walls are bowed/crooked/out of plumb, improperly installed ICF block forms, improperly installed rebar, improper vibration of concrete during the pour, inconsistent height of the brick ledge, failure to perform a concrete slump test, failure to install all required rebar, failure to timely insert rebar and comply with contractual terms of foundation notes, failure to obtain permission from McCurtain's engineer prior to concrete pour, failure to follow and comply with all [Lone Star's] recommendations for construction of ICF, and failure to install and construct the ICF in a good and workmanlike manner.

McCurtain also alleged that defects in workmanship by the Jason Defendants and Lone Star were material and rendered the ICF "unsafe and incapable of being economically repaired."

The district court summarily dismissed Central's argument that the lawsuit did not include claims for "property damage," in that the meaning of "property damage" includes any manner of "tangible alteration" to or "deprivation" of physical property. Next the court looked at whether the "damage to property" exclusion applied to preclude a duty to defend. Interestingly, the district court noted that the lawsuit alleged that physical injury to property other than the ICF wall was damaged or would be damaged:

> The Fifth Circuit interpreted an insurance policy exclusion materially identical to the provision at issue here and agreed that it only applied to " 'property damage to parts of a property that were themselves the subject of defective work by the insured' " but " 'd[id] not bar coverage for damage to parts of a property that were the subject of only non-defective work by the insured and were damaged as a result of defective work by the insured on other parts of the property.' " That analysis controls here. To take just one example from the underlying pleadings here, the damage to the footers, it is alleged, occurred as a result of defective work by the insured on other parts of the property, namely the stem wall foundation, that then required destruction of the walls and concomitant damage to the footers (emphasis in original).

As the allegations intimated at resulting or consequential damage to other parts of the property which was not the specific subject of the Jason Defendants' work, the "damage to property" exclusion did not apply to preclude a duty to defend.

Similarly, the court held that the "damage to your work" exclusion did not apply:

> The Fifth Circuit held, in another case involving a contractor's work on a foundation, that while the "your work" exclusion "precludes coverage for the cost of repairing [the insured's] own work, the foundation," . . . the exclusion did "not exclude coverage for damage to other property resulting from the defective work," such as walls and ceilings. Damage to other property resulting from the defective work, such as to walls, is precisely what is alleged here. [The Jason Defendants] did not own or provide the property damaged, thereby precluding the exclusion's application here; for this reason, Central Mutual's counterargument on this point is inapplicable.
>
> In any event, the Court agrees that it is at best "unclear" just how enmeshed [the Jason Defendants'] work was with the third-party property the underlying suit alleged was damaged. The applicable burdens and presumptions in this case – resolving the issue in favor of a duty to defend where potential coverage is shown and the insurer cannot show that an exclusion indisputably applies in full – again militate in favor of the insured on this issue. Moreover, because damage is alleged to have occurred to the walls, it would be premature to conclude, for present purposes, that the walls were connected to or were part of the same work on the foundation such that the "Your Work" exclusion would unambiguously relieve Central Mutual from a duty to defend. Therefore, there is at least some damage that isn't excluded, and the duty to defend the entire case is triggered.

The court held that Central had failed to carry its burden of proof that all of the complained of "property damage" was excluded under the "damage to property" exclusion or the "damage to your work" exclusion. As such, Central owed the Jason Defendants a legal defense.

PERSONAL AND COMMERCIAL AUTO OPINIONS

EXTRA-CONTRACTUAL CLAIM IN UIM CASE ABATED UNTIL UNDERLYING DETERMINATION OF LIABILITY AND RESULTING DAMAGES

The McAllen Court of Appeals considered State Farm Mutual Automobile Insurance Company's Motion to Abate Plaintiffs' non-contractual claims.

Lopez v. State Farm Mutual Automobile Insurance Co.[4], involved a three-vehicle automobile accident. Enrico Andrez Lopez was driving in Pharr, Texas, with Enrico Lopez, Jr. as a passenger (collectively "Plaintiffs"). Alberto Vege ("Vega") allegedly struck Anahi Zavala's ("Zavala") vehicle, which rear-ended Plaintiffs' vehicle. In June 2024, Plaintiffs sued Vega and Zavala in state court, alleging negligence. Vega answered with a general denial. In October 2024, the Plaintiffs amended their petition to add State Farm Mutual Automobile Insurance Co. ("State Farm") as a defendant and alleged violations of the Texas Insurance Code and breach of contract. They further alleged that Zavala was not insured, that they were insured by State Farm under a policy that provided "uninsured motorist coverage with $30,000/$60,000 limit," and that State Farm refused to pay the "policy limit uninsured motorist coverage." Plaintiffs non-suited their claims against Vega and Zavala in January 2026, leaving State Farm as the sole defendant. In February 2026, State Farm answered with a general denial and shortly thereafter removed the case to the Federal Court of Appeals McAllen Division. In April 2026, State Farm moved to abate the Plaintiffs' non-contractual claims. Plaintiffs did not respond.

State Farm acknowledged that the Plaintiffs' insurance policy provided for UIM benefits and that State Farm agreed to "pay compensatory damages for bodily injury or property damage an insured is legally entitled to recover from the owner or driver of an uninsured motor vehicle." However, State Farm contended that its obligation to pay UIM benefits did not arise until such time that a court determines the third-party motorist's fault and the amount of damages.

The Court agreed with State Farm stating that no legal determination had been made yet about Zavala's fault or the damages to the Plaintiffs. As such, the Court held that the Plaintiffs' extra-contractual claims were premature and allowing those claims to proceed now would likely "needlessly incur[] expenses to litigate issues that may ultimately be rendered moot." Accordingly, the Court abated the Plaintiffs' extra-contractual claims pending determination of Zavala's liability and the amount of damages.

FEDERAL DISTRICT COURT HELD AN UNINSURED MOTORIST CLAIM WAS BARRED AS A MATTER OF LAW UNDER THE TEXAS INSURANCE CODE BECAUSE THERE WAS NO ACTUAL PHYSICAL CONTACT WITH THE UNKNOWN MOTOR VEHICLE AS REQUIRED BY STATUTE

The Northern District Court, Dallas Division heard a breach of contract and declaratory judgment suit in which the Plaintiff's vehicle was struck by a detached tire and the Plaintiff was unable to identify the driver of the vehicle from which the tire detached.

Delgado v. State Farm Mutual Automobile Insurance Co.[5], arises out of an insurance dispute involving an uninsured motorist claim. In December 2024, a semi-truck passed Carlita Delgado's ("Plaintiff") car and during the pass, a tire allegedly detached from the semi-truck, striking the driver's side of Plaintiff's car. Plaintiff honked in response, but the semi-truck continued driving and ultimately fled the scene. Plaintiff reported the incident as a hit-and-run and contracted the police. Law enforcement informed Plaintiff that the traffic cameras in the area did not retain recordings, so the identity of the driver was unknown. At the time of the accident, Plaintiff had an automobile insurance policy issued by State Farm, which included coverage for uninsured motorist benefits. When Plaintiff filed a claim with State Farm, it denied the claim.

In September 2025, Plaintiff filed a breach of contract and declaratory judgment suit against State Farm in Federal District Court and subsequently filed a motion for summary judgment, to which Plaintiff did not respond within the required 21 days. Plaintiff also failed to timely respond to the Court's order requiring her to explain her failure to file a timely response. The Court granted State Farms motion for summary judgement.

In analyzing State Farms motion, the Court determined whether Plaintiff's claim for uninsured motorist coverage was barred by the "actual physical contact requirement" under the Texas Insurance Code. Uninsured or underinsured motorist claims are governed by subchapter C of the Texas Insurance Code which states that uninsured motorist coverage is limited to instances where "actual physical contact. . . occurred between the motor vehicle owned or operated by the unknown person and the person or property of the insured." The Court relied on the Texas Supreme Court's opinion in *Nationwide Ins. Co. v. Elchehimi*[6], where it was held that a collision with a separated piece of a motor vehicle is not actual physical contact with the motor vehicle as specifically required by the statute. The Court found the "actual physical contact" requirement was fatal to Plaintiff's claims as her petition stated that the actual physical contact occurred between her vehicle and a tire that had detached from the unknown semi-truck. Plaintiff did not allege the semi-truck itself made contact with her vehicle. The Court stated that Plaintiff's allegations, even taken as true and in the light most favorable to her, did not permit a reasonable inference that her car made actual physical contact with the unknown motorists' vehicle.

The Court concluded that Plaintiff's alleged facts barred her from obtaining relief under section 1952.104(3) and held in favor of State Farm, dismissing Plaintiff's breach of contract and declaratory judgment claims with prejudice.

FEDERAL DISTRICT COURT FOUND DIVERSITY EXISTED AFTER STATE FARM ENTITIES AND THE SALES AGENT WERE IMPROPERLY JOINED TO AN AUTOMOBILE INSURANCE DISPUTE

The United States District Court Western District of Texas San Antonio Division heard a Motion to Remand an auto insurance dispute involving a stolen and damaged truck.

Castaneda v. State Farm Mutual Automobile Insurance Co.,[7] arises out of an insurance dispute over a 2019 Dodge diesel truck, which was stolen and converted by a mechanic's shop in January 2025. Pro se Plaintiffs Clara Castaneda and Edgar Martinez alleged that the mechanic's shop removed several components from the vehicle, including the crankshaft pulley, air conditioner compressor, transmission driveshaft, transfer case, and the entire transmission. Plaintiffs asserted that they were able to recover the vehicle and sought benefits under their automobile policy for damages to the vehicle.

Plaintiffs filed their Original Petition in state court in November 2025, naming State Farm Lloyds, Inc., State Farm Claims, a Division of State Farm Lloyds, Inc. c/o Dalia Torres," and Hank Gerdes, State Farm Sales Agent" as Defendants. Counsel for State Farm Lloyds, Inc. notified Plaintiffs that they had sued the wrong parties, that State Farm Claims did not exist as a legal entity, and that State Farm Mutual Automobile Insurance Company ("SFMAIC") had issued the insurance policy and adjusted Plaintiffs' claim. In January 2026, Plaintiffs amended their petition to add SFMAIC as a new Defendant. Plaintiffs asserted claims against all Defendants for violations of the Texas Deceptive Trade Practices Act, violations of the Texas Insurance Code, and breach of contract. After being served, SFMAIC removed the case to Federal District Court on the basis of diversity jurisdiction.

According to SFMAIC, the Federal Court had jurisdiction under 28 U.S.C § 1332 because the amount in controversy exceeded $75,000, and there was complete diversity of citizenship between the parties. For diversity purposes, SFMAIC alleged that Plaintiffs were citizens of Texas and that SFMAIC was a citizen of Illinois. SFMAIC further contended that although State Farm Lloyds and Hank Gerdes were both admittedly citizens of Texas, their citizenship should be disregarded because they were not proper parties under the doctrine of improper joinder. SFMAIC further asserted that the Court should also disregard State Farm Claims' citizenship because it did not exist as a legal entity and no citation was ever requested or issued as to State Farm Claims. Plaintiffs timely moved to remand the case to state court, arguing that State Farm Lloyds and Hank Gerdes were properly joined and stipulated that they were not seeking more than $75,000 in damages.

The Court first addressed the amount in controversy and found that in the operative pleading, Plaintiffs sought monetary relief of $250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs. The Court held that when a complaint does not allege a specific amount of damages, the party invoking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount and the Court must evaluate the removing party's right to remove "according to the plaintiffs' pleading at the time of the petition for removal." The Court, in reviewing the Plaintiffs' pre-litigation demand to SFMAIC, determined that the Plaintiffs' potential recovery exceeded the jurisdictional threshold since the Plaintiffs demanded $50,000 for actual damages and mental anguish and also sought to recover treble damages for intentional violations of the DTPA and attorneys' fees.

Addressing the issue of improper joinder and diversity jurisdiction, the Court noted that a removing party could establish federal jurisdiction by demonstrating that an in-state defendant had been improperly joined. The Court stated that burden is on the removing party, and the burden of demonstrating improper joinder is a heavy one. To establish improper joinder, a removing party must show an inability of the plaintiff to establish a cause of action against the non-diverse party in state court, which can be shown if there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant. The Court conducted a Rule 12(b)(6) type analysis, looking at the allegations of the complaint to determine whether the complaint stated a claim under state law against the in-state defendants. The Court found that the Plaintiffs had failed to state a plausible breach-of-contract claim against State Farm Lloyds, State Farm Claims or Hank Gerdes. As to the claims for misrepresentation under Chapter 541 of the Texas Insurance Code and the DTPA, the Court held that the claims ultimately failed because they did not satisfy the heightened pleading requirements under Rule 9(b). The Court stated that even if Plaintiffs had included more specific factual support for their claims under the Insurance Code and the DTPA, that absent some specific misrepresentation of its terms of coverage by the insurer, the Plaintiffs' mistaken belief that they were obtaining coverage under certain contingencies which were in fact not covered under the policy was not generally grounds for a DTPA claim against the insurer.

The Court concluded that State Farm Lloyds, State Farm Claims and Hank Gerdes were improperly joined and thus disregarded their citizenship. The Court held that it exercised subject matter jurisdiction over SFMAIC.

HOMEOWNERS AND COMMERCIAL PROPERTY

THE FEDERAL COURT FOR THE NORTHERN DISTRICT OF TEXAS CONSIDERS THE BURDENS OF PROOF RELATED TO THE CONCURRENT CAUSATION DOCTRINE AND THE DUTY TO SEGREGATE DAMAGE ON MOTION FOR SUMMARY JUDGMENT[8]

In *Alanis*, the insured homeowner owned property in Dallas Texas that sustained significant exterior and interior water damage from a severe wind and hail stator. The homeowner submitted a claim to State Farm Lloyds ("State Farm") who initially valued the claim at $3,387.57. Although the adjuster found covered hail damage, the adjuster found that a portion of the damage was not caused by the storm and therefore not covered. The Claim fell below the deductible, and therefore State Farm declined to issue any payment.

The homeowner hired its own adjuster who found substantially more damage than State Farm, but State Farm maintained its position that most of the claimed damage either pre-dated the storm or otherwise was uncovered. Ultimately, the homeowner filed suit for breach of contract and State Farm moved for summary judgment.

In support of its Motion for Summary Judgment, State Farm argued that based on the concurrent causation doctrine, the homeowner was required to submit evidence segregating covered damage (damage caused by the hailstorm) from damages caused by non-covered perils. The homeowner contended that State Farm had not established that the concurrent causation doctrine applied, and even if it did, the homeowner satisfied its burden to segregate. The Court explained that while the insurer does not necessarily bear the burden of showing there are concurrent causes, the doctrine presupposes the existence of evidence that both covered and non-covered peril contributed to the claimed loss. The burden then shifts to the insured to segregate damages between covered and non-covered perils. The Court concluded that State Farm pointed to evidence showing that a non-covered peril could have caused the damage at issue. Nevertheless, the Court held that summary judgment against the homeowner was not warranted because a jury could reasonably conclude that all damage was covered.

Specifically, the court explained that "[t]he Court of Appeals for the Fifth Circuit has acknowledged uncertainty regarding the doctrine's application and accompanying burden of proof when, as here, an insured attributes 100 percent of their loss to a covered peril … Notwithstanding this uncertainty, the Fifth Circuit announced in Advanced Indicator that an insured could satisfy the demands of the concurrent causation doctrine 'by putting forth evidence demonstrating that the loss came solely from a covered cause.'" The homeowner pointed to the report of an independent expert that opined that the claimed loss was caused by the hailstorm."

Thus, viewing that evidence in the light most favorable to the homeowner, the Court concluded that a reasonable jury could find that the hailstorm was the sole cause of the claimed damage. Therefore, the Court denied State Farm's motion for summary judgment on the breach of contract claim.

INSURED'S DUTIES IN THE EVENT OF A LOSS PROVISION WAS A CONDITION PRECEDENT TO APPRAISAL; THE VIOLATION OF WHICH ENTITLED INSURER TO SUMMARY JUDGMENT ON HOMEOWNER'S BREACH OF CONTRACT CLAIM[9]

In *Courtland*, a residence sustained water damage due to a storm. When the homeowner first reported the claim, he only reported exterior damage. State Farm Lloyds ("State Farm") had the property inspected and the amount of damage State Farm found was below the policy's deductible. The homeowner hired a public adjuster to challenge the valuation. The public adjuster submitted its hired evaluation to State Farm, who then demanded a second inspection which was denied. Instead, the public adjuster demanded an appraisal. State Farm responded to this demand for another demand for a second inspection. Ultimately, the homeowner filed suit against State Farm bringing claims for Bad Faith, Breach of Contract, Deceptive Insurance Practices, Late Payment of Claims, Common Law Fraud, Fraud by Nondisclosure, and Fraud in Sale of Insurance Policy. Shortly thereafter, State Farm demanded an appraisal and abated the lawsuit.

Following the appraisal, State Farm's valuation increased significantly and State Farm issued a payment of approximately $14,000 to the homeowner based on the appraisers valuation of the loss. In the payment letter, Defendant extended the period for Plaintiff to claim replacement cost benefits of $1,171.46 until September 23, 2026. and explained that it would release the $5,656.20 for the Building Code required shingles upon proof that the work was completed. The homeowner then amended the lawsuit to bring only two claims: breach of contract and fraud. State Farm moved for summary judgment.

In pertinent part, the breach of contract claim turned on State Farms's alleged breach of the appraisal clause in the parties' contract—that is, State Farm's alleged failure to conduct an appraisal when requested in the fall of 2023. State Farm argued that it was entitled to summary judgment because the Homeowner had not satisfied a condition precedent necessary to demand appraisal at that time. The homeowner argued that the appraisal demand was not premature because the appraisal clause authorized either party to demand appraisal upon a disagreement as to the amount of loss, *and* by fall 2023, the parties already disagreed regarding the amount of loss to the roof. Specifically, the parties disagreed about whether the "Conditions" provision under "Section I" of the insurance policy created an additional condition for the right to invoke appraisal. Under "Conditions," the appraisal provision stated, "If you and we fail to agree on the amount of loss, either party can demand that the amount of the loss be set by appraisal." The Court reasoned that, standing alone, this sentence could plausibly be read to create an immediate right to appraisal upon disagreement related to the amount of loss. However, the Court found that in the next few sentences within this same appraisal provision, the right to demand appraisal was conditioned upon Plaintiff complying with specific duties: "You must comply with SECTION I - CONDITIONS, Your Duties After Loss before making a demand for appraisal." The Court concluded that this provision used specific, mandatory language in stating that certain duties must be complied with before Plaintiff has a right to demand appraisal, thereby creating a condition precedent to the right to invoke appraisal. In other words, the right to demand appraisal is conditioned on Plaintiff first executing duties under "Your Duties After Loss."

"Your Duties After Loss" stated, "After a loss to which this insurance may apply, you must cooperate with us in the investigation of the claim and also see that the following duties are performed: . . . (d) as often as we reasonably require: (1) exhibit the damaged property." Thus, one of the homeowner's duties after loss is to exhibit his damaged property as often as State Farm reasonably required. In this case, the homeowner exhibited his exterior damage to Defendant on his first request, but he did not report or exhibit any interior damage. The Court reasoned that when the homeowner then claimed interior damage, it was reasonable for State Farm to request a second inspection. Thus, the homeowner's demand for appraisal occurred before he satisfied the condition precedent of exhibiting the damage as often as State Farm reasonably required.

The Court held that State Farm did not breach the contract and that State Farm was entitled to summary judgment on the breach of contract claim.

CHAPTER 542 DOES NOT APPLY TO FAILURE TO REIMBURSE AMOUNTS PAID OR OWED TO INJURED THIRD PARTIES

On March 4, 2026, the United States District Court for the Western District of Texas (Austin Division) had occasion to consider whether Chapter 542 of the Texas Insurance Code applied to the failure of a carrier to pay a third-party settlement of a claim.[10]

In *Allied World*, Allied World Insurance Company ("Allied") issued an Agents and Brokers Professional Liability Policy to CSHC Investment Holdings, LLC ("CSHC"). The underlying claim involved a motor vehicle accident. On May 19, 2021, Taylor Peters allegedly caused a five-vehicle accident in South Austin while driving intoxicated, injuring seven people, including the Palma brothers Constantino Palma, Jr. and Emmanuel Palma ("the Palmas") who Peters directly rear-ended. At the time of the accident, Peters was insured under a Home State personal auto policy with minimum liability limits of $30,000 per person and $60,000 per accident. Under the Agency Agreement, Bluefire was responsible for adjusting claims under that policy and first received notice of the accident on May 20, 2021. Over the ensuing weeks, Bluefire issued acknowledgment letters, received settlement demands (including a June 2, 2021 policy-limits demand from the Palmas), evaluated medical records, settled several other claimants' claims, and, on June 21, 2021, offered the remaining Home State policy limits to the Palmas. Thereafter, the Palmas filed suit against Peters in state court in Travis County on August 21, 2021, asserting claims for negligence and later amending to add John Does 1-4 and to pursue Dram Shop theories of liability, but they did not name Bluefire as a defendant (the "Palma Suit"). The Palma Suit settled in December 2024 prior to trial.

Allied first received notice of the accident and the Palmas' claim against Home State and a "potential claim" involving Bluefire given the severity of the Palmas' injuries on November 14, 2022. In March 2023, Allied learned that a "demand" had been made from Bluefire in the form of a verbal expectation from counsel for the Palmas that Home State would contribute to settlement in excess of Peters' policy limits. After monitoring developments and appointing defense counsel for Bluefire, Allied issued a series of reservation of rights and position letters in October 2023, October 2024, and December 2024, all reiterating its position that any alleged wrongful acts by Bluefire occurred after the June 8, 2021, wrongful-acts deadline and thus fell outside the Allied Policy's indemnity coverage. According to Allied, Bluefire nevertheless attended mediations in the Palma suit, accepted a mediator's proposal on December 16, 2024, without first obtaining Allied's written consent, and then demanded that Allied fund the portion of the settlement in excess of the remaining self-insured retention in exchange for a release of Bluefire's claims against Allied.

On April 16, 2025, Allied filed a declaratory judgment suit seeking, among others, a declaration that its professional liability policy did not provide coverage for any alleged mishandling of the Palma demand or for the December 17, 2024 settlement, and that it did not owe any duty to indemnify related to the settlement. In pertinent part, Allied also sought rulings that only Home State (not Peters or the Palmas) had standing to assert any negligence/Stowers claim against Bluefire. Home State filed counterclaims against Allied for breach of contract, violations of Texas Insurance Code 541 and 542, and for attorney fees. On August 22, 2025, Allied filed a motion to dismiss Defendants' counterclaims under chapter 542 of the Texas Insurance Code.

In their counterclaims, Bluefire and Home State alleged that Allied breached the insurance contract by wrongfully refusing to indemnify them for the Palma-related claim, and that any ambiguity, waiver, or estoppel must be resolved in their favor. They also claimed Allied violated Texas Insurance Code Chapters 541 and 542 by misrepresenting coverage, failing to fairly and promptly settle or failing to explain its denial, and delaying payment. Allied argued that because Bluefire was not a first party claimant, and the claim was for third-party injury payments, not for a direct payment to an insured for its own loss, it was not a "claim" by a "clamaint" pursuant to § 542.051.

The Court found that Bluefire and Home State's prompt-payment claim failed because it did not involve a "claim" within the meaning of Chapter 542, as the only relief sought from Allied was indemnity for a settlement of the Palmas' bodily-injury lawsuit, "in other words, reimbursement of amounts paid (or owed) to injured third parties," and not the prompt payment of money owed to an insured for its own loss. Therefore, the Court dismissed the counterclaim for lack of subject matter jurisdiction.

MOTOR CARRIER OPINIONS

THE UNITED STATES SUPREME COURT CLARIFIES THAT A STATE-LAW NEGLIGENT-HIRING CLAIM AGAINST A TRANSPORTATION BROKER IS NOT PREEMPTED BY THE FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT BECAUSE IT FALLS WITHIN THE ACT'S SAFETY EXCEPTION FOR STATE REGULATION OF MOTOR VEHICLES

The case of *Montgomery v. Caribe Transport II, LLC, et al.*[11] arose from a collision on an Illinois highway in which Shawn Montgomery sustained severe and permanent injuries, including the amputation of a leg, after Yosniel Varela-Mojena, a driver employed by Caribe Transport II, LLC ("Caribe"), veered off course while hauling a load of plastic pots in a Mack Truck and struck Montgomery's tractor-trailer, which was stopped on the side of the road. Respondent C.H. Robinson Worldwide, Inc. ("C.H. Robinson"), a transportation broker, had coordinated the shipment by connecting the shipper with Caribe. At the time C.H. Robinson engaged Caribe, the carrier held a "conditional" safety rating from the Federal Motor Carrier Safety Administration and had been found deficient in the areas of driver qualification, hours of service, inspection and maintenance practices, and crash rate, among others.

Montgomery filed suit in the United States District Court for the Southern District of Illinois against Varela-Mojena, Caribe, C.H. Robinson, and related entities. Among other claims, he alleged that C.H. Robinson negligently hired Caribe with knowledge, or constructive knowledge, of its subpar safety record, making it reasonably foreseeable that the hiring would result in a crash injuring others. Applying Seventh Circuit precedent, the district court held that Montgomery's negligent-hiring claim against C.H. Robinson was expressly preempted by the Federal Aviation Administration Authorization Act ("FAAAA"), which prohibits states from enacting or enforcing laws "related to a price, route, or service" of any motor carrier or broker with respect to the transportation of property. The district court further held that the claim did not fall within the FAAAA's safety exception, which preserved "the safety regulatory authority of a State with respect to motor vehicles." The Seventh Circuit affirmed the trial court's decision.

This ruling presented a significant divide amongst the Circuits. Previously, the Seventh and Eleventh Circuits held that any claims against a broker were preempted and the safety exception did not apply, however, the Sixth and Ninth Circuits had previously held claims against a broker were not preempted due to application of the safety exception. Accordingly, the Supreme Court granted certiorari to resolve this split.

In a unanimous opinion, the Supreme Court reversed the Seventh Circuit and held that Montgomery's negligent-hiring claim was not preempted by the FAAAA because it fell within the FAAAA's safety exception. The Court's analysis turned on the meaning of the statutory phrase "with respect to motor vehicles" in § 14501(c)(2)(A). Applying ordinary dictionary definitions, the Court construed the phrase "with respect to" to mean "concerns" or "regards". Furthermore, the FAAAA expressly defines "motor vehicle" to include any vehicle, machine, tractor, trailer, or semitrailer propelled by mechanical power and used on a highway in transportation. Combining these definitions, the Court held that a claim is "with respect to motor vehicles" if it concerns the vehicles used in transportation.

Relying upon this finding, the Court held that a negligent-hiring claim requiring a broker to exercise ordinary care in selecting a carrier directly "concerns" motor vehicles because it concerns selecting truck that will ultimately transport the goods. The Court further noted that common-law duties and standards of care form part of a state's authority to regulate safety (a point no party disputed). Therefore, Montgomery's claim fell squarely within the safety exception of the FAAAA and was therefore saved from preemption. Accordingly, the Court rejected Montgomery's contention that this interpretation would swallow the FAAAA's preemption provision completely, by noting that the safety exception saves only claims involving motor

vehicle safety and does not apply to preempt state laws concerning prices, routes, or services. The Court similarly rejected a surplusage argument, finding that potential overlap among the FAAAA's exceptions arises from the reference to "safety" generally and exists regardless of how the disputed phrase is defined. Finally, the Court acknowledged but declined to resolve a textual asymmetry between subsection (c), which contains a safety exception, and subsection (b), which preempts state regulation of intrastate broker services without a corresponding safety exception. Instead, the Court noted that:

> It would be even odder to say that the alleged tort — the negligent hiring of an unsafe motor carrier whose truck caused injury — is not an exercise of "the safety regulatory authority of a State with respect to motor vehicles." § 14501(c)(2)(A). The text of subsection (c)(2)(A) controls. Better to live with the mystery than to rewrite the statute.

While this was a unanimous decision it should be noted that Justice Kavanaugh, in a concurrence joined by Justice Alito, emphasized that the case was closer than the majority opinion might suggest. Justice Kavanaugh acknowledged that two contextual considerations favored the brokers. First, the FAAAA mandates minimum insurance coverage for motor carriers but not for brokers (suggesting Congress may not have anticipated tort liability against brokers for negligent carrier selection). Second, allowing state tort suits against brokers for interstate transportation while preempting such suits for intrastate transportation, as plaintiff's position would require, seemed inconsistent as a matter of ordinary preemption doctrine. Even so, Justice Kavanaugh concluded that the countervailing considerations carried greater weight. Specifically, the FAAAA was enacted to pursue economic deregulation, not safety deregulation, and it did not preempt state tort suits against trucking companies for accidents caused by their own negligence. It would be unusual to read the same statute as categorically shielding upstream brokers from state tort liability for negligently selecting those carriers. He also observed that federal law imposes no meaningful safety obligations on brokers with respect to carrier selection, making it unlikely that Congress intended to leave brokers subject to no meaningful safety regulation at all. Justice Kavanaugh was careful to note that the decision should not be read as opening brokers to routine liability: brokers who act reasonably and engage reputable carriers should be able to successfully defend against negligent-hiring claims, and the proximate-cause requirement in state tort law provides an additional filter against excessive exposure.

As noted above, this decision resolves a significant circuit split and materially expands broker exposure to state tort liability arising from commercial trucking accidents. Prior to Montgomery, transportation brokers operating in certain jurisdictions enjoyed broad FAAAA preemption protection that effectively shielded them from negligent-hiring claims. That protection is now gone nationwide. Adjusters and carriers handling motor carrier claims should anticipate that plaintiffs' counsel will routinely examine FMCSA safety ratings, compliance review histories, and crash data for carriers at the time of engagement by the broker, and will use that information to pursue negligent-hiring theories against brokers alongside primary negligence claims against the carrier and driver. Insurers writing commercial lines coverage for transportation brokers — including errors and omissions and general liability forms — should similarly expect elevated claim frequency and heightened scrutiny of policy language as the litigation landscape adjusts to this ruling. On the defense side, Justice Kavanaugh's concurrence offers useful practical guidance: brokers that implement and document reasonable carrier vetting procedures, including review of FMCSA safety ratings and verification of active authority, will be better positioned to defeat negligent-hiring claims on the merits, and the proximate-cause requirement will continue to serve as a meaningful check in cases where the accident resulted from conditions unrelated to the safety deficiencies that should have been apparent to the broker at the time of hiring. However, it should be anticipated that establishing a valid liability defense for brokers will be a factually dependent and intensive process.

MISCELLANEOUS OPINIONS

TEXAS SUPREME COURT HOLDS SETTLING DEFENDANTS MAY PURSUE CONTRACTUAL PROPORTIONAL INDEMNITY CLAIMS AGAINST NON-SETTLING PARTIES FOLLOWING SETTLEMENT

In *S&B Engineers & Constructors, Ltd. v. Scallon Controls, Inc.*[12], the Texas Supreme Court issued a closely divided 5-4 opinion addressing whether a settling defendant may pursue contractual proportional indemnity claims against a non-settling subcontractor after resolving the underlying tort litigation. The decision represents a significant development in Texas indemnity law and is likely to have substantial implications for construction, energy, and industrial projects where parties routinely allocate risk through contractual indemnity provisions.

The case arose from a 2015 accident at a South Texas refinery. Sunoco hired S&B Engineers & Constructors, Ltd. ("S&B") to design and install a safety system, and S&B subcontracted with Scallon Controls, Inc. ("Scallon") to supply and program a fire-suppression system. According to the record, Scallon programmed the system with a failsafe feature that would release a chemical fire suppressant if power was lost. When the system briefly lost power while workers were performing work on scaffolding, the suppressant discharged, allegedly causing seven workers to fall while attempting to escape.

The injured workers sued S&B and Sunoco. In response, S&B and Sunoco asserted claims against Scallon, alleging that Scallon's conduct contributed to the accident. After approximately four years of litigation, however, the workers settled their claims against S&B and Sunoco. S&B paid approximately $2.35 million toward the settlement, its insurers contributed an additional $2 million, and Zurich American Insurance Company paid approximately $400,000 on Sunoco's behalf. Importantly, Scallon did not participate in the settlement and was not a party to the settlement agreement.

Following settlement, S&B and Zurich sought to recover a portion of the settlement amount from Scallon under contractual indemnity provisions contained in the parties' purchase agreement. The agreement required Scallon to indemnify S&B and Sunoco for losses arising from bodily injury claims to the extent caused by Scallon's negligence and further provided that, in cases involving comparative or concurrent negligence, Scallon's indemnity obligation would be limited to its "allocable share" of responsibility.

The trial court granted summary judgment in Scallon's favor, and the Beaumont Court of Appeals affirmed. Both courts concluded that S&B's settlement extinguished any right to pursue proportional indemnity against Scallon. The court of appeals relied heavily on two Texas Supreme Court decisions issued in 1987: Beech Aircraft Corp. v. Jinkins and Ethyl Corp. v. Daniel Construction Co.

The Texas Supreme Court reversed.

Writing for the majority, Justice Young distinguished Jinkins, explaining that the decision addressed common-law and statutory contribution rights among joint tortfeasors and did not involve contractual indemnity obligations. According to the Court, Jinkins stands for the proposition that a settling defendant cannot purchase a plaintiff's claims and then pursue contribution against a non-settling tortfeasor. The Court concluded, however, that contractual indemnity presents an entirely different circumstance because the right to recovery arises from the parties' negotiated agreement rather than from common-law or statutory contribution principles.

The majority emphasized that Texas law strongly favors freedom of contract and allows sophisticated parties to allocate risk as they see fit. The Court further noted that Chapter 33 of the Texas Civil Practice and Remedies Code expressly preserves contractual indemnity rights and provides that such rights prevail over conflicting statutory contribution provisions. In the Court's view, the parties had agreed to a form of comparative or proportional indemnity, and nothing in Jinkins prevented enforcement of that agreement following settlement.

The Court likewise rejected Scallon's reliance on Ethyl and the express-negligence doctrine. The express-negligence doctrine generally requires that a contract expressly state an intent to indemnify a party for its own negligence. Here, however, the Court observed that the agreement did not seek indemnity for S&B's or Sunoco's negligence. Instead, the agreement expressly limited Scallon's indemnity obligation to Scallon's own allocable share of negligence. Because the contract disclaimed indemnification for the indemnitees' own negligence and only required indemnification for Scallon's proportional responsibility, the Court concluded that the agreement complied with Ethyl.

Although the Court held that S&B and Zurich may pursue contractual indemnity claims notwithstanding the settlement, it was careful to explain that recovery is far from automatic. On remand, S&B and Zurich must still establish that the settlement was made in good faith, that the settlement amount was reasonable, and that some portion of the liability is attributable to Scallon's negligence. The Court emphasized that a settling party assumes significant risk when it settles before obtaining a judicial allocation of fault because it retains the burden to prove both the reasonableness of the settlement and the indemnitor's share of responsibility.

The decision is particularly noteworthy because of the sharply divided Court. Justice Bland authored a lengthy dissent joined by Justices Lehrmann, Devine, and Huddle. The dissent argued that the majority effectively permitted S&B to recover for its own settlement of its own liability despite contractual language limiting indemnity to Scallon's negligence. According to the dissent, the settlement resolved only claims against S&B and Sunoco and therefore, as a matter of law, represented payment for their own alleged liability rather than Scallon's.

The dissent further expressed concern that the majority had created a new form of post-settlement "case-within-a-case" litigation requiring courts and juries to reconstruct the underlying liability case after the original plaintiffs have settled and exited the litigation. Justice Bland warned that such proceedings may prove more complicated and burdensome than the majority anticipated and may create incentives similar to those that previously led Texas courts to reject Mary Carter agreements and other arrangements viewed as distorting the adversarial process.

Overall, the decision represents a significant endorsement of contractual proportional indemnity provisions and reinforces the Texas Supreme Court's continued emphasis on freedom of contract in commercial settings.

At the same time, the narrow 5-4 vote and the forceful dissent suggest that the scope and practical application of the decision will likely remain the subject of future litigation. For insurers, contractors, and project owners who routinely rely on indemnity agreements to allocate risk, S&B may prove to be one of the most consequential Texas indemnity decisions in recent years.

1. *FCCI Insurance Company v. Easy Mix Concrete Services, LLC,* 2026 U.S. Dist. LEXIS 111348 *1 (W.D. Tex. June 1, 2026).
2. *Sentry Ins. Co. v. CIVE, Inc.,* 2026 U.S. Dist. LEXIS 75769 * (S.D. Tex. March 16, 2026).
3. *Central Mutual Insurance Co. v. Jason Holdings, LLC,* 2026 U.S. Dist. LEXIS 42576 * (W.D. Tex. February 26, 2026) (Magistrate R. Farrer), adopted and approved, 2026 U.S. Dist. Lexis 60909 * (March 23, 2026 (Justice F. Biery).
4. *Lopez v. State Farm Mut. Auto. Ins. Co.*, Civil Action No. 7:26-CV-00102, 2026 U.S. Dist. LEXIS 125826 (S.D. Tex. 2026).
5. *Delgado v. State Farm Mut. Auto. Ins. Co.*, No. 3:25-cv-2425, 2026 LX 289279 (N.D. Tex. 2026).
6. *Nationwide Ins. Co. v. Elchehimi*, 249 S.w.3d 430, 434 (Tex. 2008).
7. *Castaneda v. State Farm Mut. Auto. Ins. Co.*, No. SA-26-CA-01516-XR, 2026 LX 286646 (W.D. Tex. 2026).
8. *Alanis v. State Farm Lloyds*, No. 3:24-CV-2173-BK, 2026 LX 354120 (N.D. Tex. June 10, 2026).
9. *Courtland v. State Farm Lloyds,* No. EP-24-CV-60-KC, 2026 LX 172330 (W.D. Tex. Mar. 30, 2026).
10. *Allied World Surplus Lines Ins. Co. v. Multi-State Gen. Agency, Inc.*, No. 1:25-CV-576-DAE, 2026 U.S. Dist. LEXIS 45503, at *10 (W.D. Tex. Mar. 4, 2026).
11. *Montgomery v. Caribe Transport II, LLC, et al,* 46 S. Ct. 1199 (May 14, 2026).
12. *S&B Engineers & Constructors, Ltd. v. Scallon Controls, Inc.*, 734 S.W.3d 869 (Tex. 2026).

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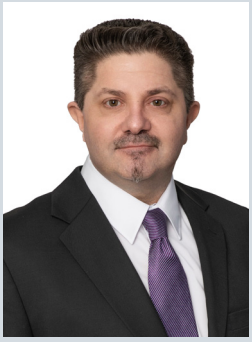

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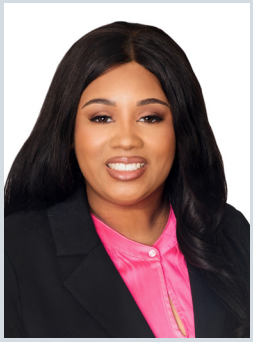

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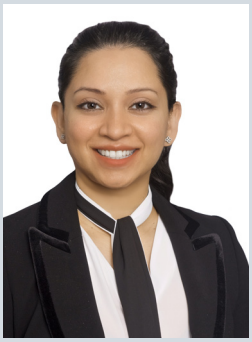

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