

No. 14-0721

IN THE SUPREME COURT OF TEXAS

USAA TEXAS LLOYDS COMPANY,

Petitioner,

v.

GAIL MENCHACA,

Respondent.

On Petition for Review from the
Thirteenth Court of Appeals at Corpus Christi/Edinburg, Texas
Cause No. 13-13-00046-CV

PETITION FOR REVIEW

Wallace B. Jefferson
State Bar No. 00000019
wjefferson@adjtlaw.com
Rachel A. Ekery
State Bar No. 00787424
rekery@adjtlaw.com
ALEXANDER DUBOSE JEFFERSON
& TOWNSEND LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
Telephone: (512) 482-9300
Facsimile: (512) 482-9303

**COUNSEL FOR PETITIONER
USAA TEXAS LLOYDS COMPANY**

IDENTITY OF PARTIES AND COUNSEL

Defendant/Appellant/Cross-Appellee/ Petitioner:

USAA Texas Lloyds Company

Appellate Counsel in this Court:

Wallace B. Jefferson
Rachel A. Ekery
ALEXANDER DUBOSE JEFFERSON
& TOWNSEND LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
Telephone: (512) 482-9300
Facsimile: (512) 482-9303

Trial and Appellate Counsel:

Levon G. Hovnatanian
Bruce E. Ramage
Robert T. Owen
Christopher W. Martin
P. Wayne Pickering
Tanya E. Dugas
MARTIN, DISIERE, JEFFERSON
& WISDOM, LLP
808 Travis, 20th Floor
Houston, Texas 77002
Telephone: (713) 632-1700
Facsimile: (713) 222-0101

Plaintiff/Appellee/Cross-Appellant/ Respondent:

Gail Menchaca

Appellee/Cross-Appellant/Respondent Trial and Appellant Counsel:

J. Steve Mostyn
THE MOSTYN LAW FIRM
3810 West Alabama Street
Houston, Texas 77027
Telephone: (713) 861-6616
Facsimile: (713) 861-8084

Gilberto Hinojosa
LAW OFFICE OF GILBERTO HINOJOSA
ASSOCIATES, P.C.
622 E. Saint Charles St.
Brownsville, Texas 78520
Telephone: (956) 544-4218
Facsimile: (956) 544-1335

Richard P. Hogan, Jr.
Jennifer Bruch Hogan
HOGAN & HOGAN
909 Fannin, Suite 2700
Houston, Texas 77010
Telephone: (713) 222-8800
Facsimile: (713) 222-8810

Randal Cashiola
CASHIOLA & BEAN
2090 Broadway Street, Suite A
Beaumont, Texas 77701
Telephone: (409) 813-1443
Facsimile: (409) 813-1467

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STATEMENT OF THE CASE

- Nature of the Case and Parties:* Homeowner Gail Menchaca sued her insurer, USAA Texas Lloyds Company, for contractual and extra-contractual claims arising from wind-related damages allegedly sustained to her home during Hurricane Ike.
- Trial Court:* Hon. Fred Edwards, 9th Judicial District Court, Montgomery County, Texas
- Trial Court's Disposition:* A jury answered “No” to the question, “Did USAA fail to comply with the terms of the insurance policy with respect to the claim for damages filed by Gail Menchaca resulting from Hurricane Ike?” [App. 2; CR1:665](#). In the next question, the jury found that USAA failed to conduct a reasonable investigation. [App. 2; CR1:666](#). The trial court disregarded the “no breach” answer and rendered judgment awarding Menchaca \$164,371 (\$11,350 in damages, \$130,000 in attorney’s fees through trial, \$1,969.92 in prejudgment interest, \$7,718.62 in penalty interest under Insurance Code section 542.060(a), \$13,332.45 in court costs, and \$15,000 in conditional appellate attorney’s fees). [App.1; CR1:716-19](#).
- Court of Appeals:* Thirteenth Court of Appeals; opinion by Justice Garza, joined by Justices Rodriguez and Benavides. *USAA Texas Lloyd’s Co. v. Menchaca*, No. 13-13-00046-CV, 2014 WL 3804602 (Tex. App.—Corpus Christi July 31, 2014, pet. filed) (mem. op.); [App. 3](#).
- Court of Appeals' Disposition:* Modified the judgment to remove the award of penalty interest; affirmed the judgment as modified.

STATEMENT OF JURISDICTION

This Court has jurisdiction under Government Code section 22.001(a)(6) because the court of appeals committed an error of law of such importance to the jurisprudence of the state that it requires correction. This Court has jurisdiction under Government Code section 22.001(a)(3) because the case involves the construction of Insurance Code chapter 541. This Court has jurisdiction under Government Code section 22.001(a)(2) because the court of appeals held differently from prior decisions of other courts of appeals and of this Court on a question of law material to the decision.

ISSUES PRESENTED

1. When a jury rejects an insured's claim that her insurer breached its contract, is the insured precluded from recovering on an extra-contractual claim?
2. When a jury rejects an insured's claim that her insurer breached its policy, can the insured nevertheless recover policy benefits if the same jury finds fault with the insurer's investigation?
3. Can a trial court "disregard" a jury question that is derived from the pleadings, that was tried to a jury, and that supports a take-nothing judgment in the defendant's favor?

REASONS TO GRANT REVIEW

An insurer has a contractual obligation to pay covered claims. But if an insurer has no obligation to pay a claim, and hence no contractual duty is owed, then the extra-contractual provisions of the Insurance Code cannot support recovery of contractual benefits. Until now. The court of appeals held that an insurer, which was not contractually obligated to its insured, nevertheless owed *contractual benefits* because a jury found that it could have investigated harder before refusing to pay a claim. That is called liability without fault. And the holding ignores the stark fact that an insurer's investigation of a loss (which necessarily occurs *after* a loss) cannot also *cause* the loss.

This Court has squarely held that a failure to properly investigate a claim is not a basis in itself to require an insurer to pay policy benefits to its insured. *Provident Am. Ins. Co. v. Castañeda*, 988 S.W.2d 189, 198 (Tex. 1998). Here, the insured proved no injury independent of what she alleged she was owed under the policy. And what she was owed under the policy was \$0, because she could not prove a contractual breach. For either or both reasons, her claim is barred.

Concluding that this case presented “unique circumstances,” the court of appeals ignored *Castañeda* and other Supreme Court cases, and explained away relevant precedent from intermediate appellate courts.

The questions presented in this case are *not* unique. They were directly presented—and answered—in *Castañeda*. Nor is the relevant precedent distinguishable. In similar cases, state and federal courts have held that an insured may not recover under circumstances like those involved here.

Hurricane Ike was the costliest storm in Texas history. *See Ike's Insured Losses Total Almost \$12 Billion*, DALLAS MORNING NEWS, Jan. 29, 2010; App. 9. Insured losses from wind damage alone totaled almost \$10 billion. *Id.* In litigation stemming from those and other storm-related losses, this Court must ensure that the appellate courts scrupulously apply its precedent. The court of appeals failed to do so.

This Court should grant review.

STATEMENT OF FACTS

Two months after Hurricane Ike hit south Texas, Gail Menchaca called USAA to report a claim under her homeowners insurance policy. RR3:44. Menchaca expressed concern about possible damage to her roof, electrical box, fence, and air-conditioner. *Id.*

USAA sent adjuster Darby Hambrick to Menchaca's house. RR4:52; RR10:18. Hambrick found three missing shingles on the roof. RR10:19. He found no damage to the air conditioner, the fence, or the electrical system, although he noted that the electrical box was not attached to the house. RR10:21-23. Menchaca told Hambrick that she was also concerned about the water level in her toilets; Hambrick inspected them but found no problems. RR10:23-24.

Hambrick's repair estimate included \$455 to replace the missing shingles and \$245 for an electrician to attach the electrical box. DX4; RR17:79. The \$700 estimate was less than Menchaca's \$2020 policy deductible.¹ RR4:11. USAA notified Menchaca that although her policy covered wind damage, the loss did not exceed the deductible, so she was not entitled to policy benefits. DX3; RR17:77.

Five months later, Menchaca asked USAA to reinspect her roof. RR9:49. USAA adjuster David Glover, a 22-year employee, examined Menchaca's home and

¹ The home was insured for \$202,000, and the policy had a 1% deductible. DX1.

confirmed Hambrick's initial findings. RR4:78-79; RR9:5. Glover also found some unsealed shingles, which he attributed to an installation or manufacturing defect, not wind. RR4:79-80. Glover noted that the minimal damage to the roof did not warrant replacement under the policy. DX5; RR17:84.

Three weeks later, Menchaca sued USAA, alleging breach of contract, fraud, DTPA, and Insurance Code claims. CR1:9-23. Her notice letter, hand-delivered with her original petition, demanded \$1,245,355.25 in economic damages, \$50,000 for mental anguish, and \$481,785.08 for expenses, including attorney's fees. CR1:24-25; DX21; RR18:162. At trial, one of Menchaca's experts testified that the entire roof needed to be replaced and that the storm caused substantial interior damage, including cracks and separations. RR4:110, 115, 130. Another expert provided damage estimates that ranged from a low of \$38,439.15 to a high of \$76,348.67. RR5:106, 116; DX23; RR18:176; DX39; RR22:55.

Menchaca's claims were tried to a jury for eight days. The trial court directed a verdict in USAA's favor on the fraud claim and submitted the remaining contract and statutory claims to the jury. RR8:56. The first question, pertaining to contractual liability, asked whether USAA failed to comply with the terms of the insurance policy; the jury answered "No." [App. 2; CR1:665](#). The second question, pertaining to extra-contractual liability, included a laundry list of statutory claims and asked whether USAA had engaged in deceptive acts or practices. [App.2;](#)

[CR1:666](#). Although it found no other violations, the jury determined that USAA “[r]efused to pay a claim without conducting a reasonable investigation with respect to a claim.” *Id.*; see also TEX. INS. CODE § 541.060(a)(7). The jury awarded Menchaca \$11,350 in damages in connection with that finding. [App. 2; CR1:667](#). The jury also awarded Menchaca \$130,000 in attorney’s fees through trial. [App.2; CR1:672](#).

Contending the jury’s answer to the breach question precluded Menchaca’s recovery of policy benefits and that Menchaca’s failure to prove independent injury barred her recovery, USAA moved for judgment as a matter of law. CR1:675-80. At the post-trial hearing on that motion, the trial court disregarded the jury’s failure to find a breach, contending that the question was improper:

It says, “breach of contract,” but it doesn’t say what kind of breach. It doesn’t even explain breach of contract. It doesn’t even give a definition for breach of contract. There’s all kinds of other things that should have been put in there about what’s material breach, definition of material breach. The question fails altogether. It shouldn’t have been submitted in the first place. . . . I think I can easily ignore question number one as being incomprehensible to a layman and that it has no effect. . . . I’m going to ignore question number one entirely because I think it was poorly worded. It did not have adequate definitions with it to aid the jurors. I think its response is meaningless.

Menchaca, 2014 WL 3804602, at *4 n.12. The trial court also disregarded the jury’s failure to award appellate attorney’s fees. CR1:716.

The trial court rendered judgment for Menchaca for \$164,371, including \$11,350 in damages, \$130,000 in attorney’s fees through trial, \$1,969.92 in

prejudgment interest, \$7,718.62 in penalty interest under the Insurance Code, \$13,332.45 in court costs, and \$15,000 in conditional appellate attorney's fees. [App. 1; CR1:717-18.](#)

After modifying the judgment to eliminate the award of penalty interest, the court of appeals affirmed. *Menchaca*, 2014 WL 3804602, at *9. It held that Menchaca's extra-contractual claims were not barred even though the jury rejected her breach of contract claim; that the trial court was justified in disregarding the contract finding; and that Menchaca could recover policy benefits on her extra-contractual claim even though she proved no injury caused by USAA's investigation: "[u]nder the unique circumstances in this case, USAA did not breach the policy but policy benefits are indeed the correct measure of damages caused by USAA's violation of the insurance code." *Id.*

SUMMARY OF THE ARGUMENT

“[I]n most circumstances, an insured may not prevail on a bad faith claim without first showing that the insurer breached the contract.” *Liberty Nat’l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996). There may be one exception: this Court has recognized the theoretical possibility that “in denying the claim, the insurer may commit some act, so extreme, that would cause injury independent of the policy claim.” *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 341 (Tex. 1995). Menchaca has never contended—and the lower courts did not address or find—that this hypothetical exception applies in this case. Because Menchaca failed to prove either breach or independent injury, her claim fails. *See Castañeda*, 988 S.W.2d at 198.

The trial court chose to ignore the jury’s rejection of Menchaca’s contract claim, characterizing its answer to Question No. 1 as “meaningless.” *Menchaca*, 2014 WL 3804602, at *4 n.12. The court of appeals endorsed that approach. *Id.* at *7. This Court should, instead, affirm the jury’s verdict and render the take-nothing judgment it compels.

ARGUMENT

- I. **Because Menchaca failed to prove that USAA breached the contract, and because there was no proof of damages beyond contract damages, USAA is entitled to rendition of judgment.**
 - A. **A failure to properly investigate a claim is not a basis for obtaining policy benefits, and Menchaca proved no injury independent of the policy claim.**

This Court has already decided this precise issue. *See Castañeda*, 988 S.W.2d at 198. There, Denise Castañeda sued her insurance company, Provident American, for violations of the Insurance Code and the DTPA, but not for breach of contract. *Id.* at 192, 201. A jury found for her on the statutory claims and awarded her \$50,000 for loss of benefits and harm to her credit reputation. *Id.* at 192. The jury charge defined “loss of benefits” as “the amount of benefits due under the policy.” *Provident Am. Ins. Co. v. Castañeda*, 914 S.W.2d 273, 281 (Tex. App.—El Paso 1996). The trial court rendered judgment in Castañeda’s favor, and the court of appeals affirmed. *Id.* at 284.

This Court reversed, specifically rejecting Castañeda’s argument that she was entitled to recover damages equivalent to policy benefits for her insurer’s failure to adequately investigate a claim:

With regard to the damages that might be recoverable if an insurer failed to adequately investigate a claim, we indicated in *Stoker* that ***failure to properly investigate a claim is not a basis for obtaining policy benefits***. We did recognize, though, that there might be liability for damage to the insured other than policy benefits or damages flowing

from the denial of the claim if the insured mishandled a claim. We said: “We do not exclude, however, the possibility that in denying the claim, the insurer may...cause injury independent of the policy claim.” The concurring Justices in *Stoker* agreed that ***the manner in which a claim is investigated must be the proximate cause of damages before there could be a recovery.*** Castañeda and the dissent fault Provident American’s investigation of the claim and claims-handling procedures on a number of counts, but ***none of the actions or inactions of Provident American was the producing cause of any damage separate and apart from those that would have resulted from a wrongful denial of the claim,*** as we discuss in Part IV.B below.

Castañeda, 988 S.W.2d at 198 (Tex. 1998) (emphasis added).

Thus, Castañeda could not recover the policy benefits the jury awarded. *Id.* at 199. The loss of credit reputation stemmed from the denial of benefits, so those damages were not recoverable either. *Id.* Accordingly, there was no evidentiary support for the extra-contractual claims or damages. *Id.* at 201. And because “Castañeda did not plead and did not obtain a determination from the trial court that Provident American was liable for breach of the insurance contract, . . . there is no basis on which Castañeda may recover based on this record.” *Id.* The Court rendered judgment that Castañeda take nothing. *Id.*

This holding makes sense. The Insurance Code allows an insured to recover only those actual damages “caused by” the particular statutory violation. TEX. INS. CODE § 541.141. A failure to properly investigate can *never* cause damages equating to benefits owed under the insurance contract. Those are necessarily *contract* damages arising, if at all, from the event triggering the contractual claim—here,

Hurricane Ike—and any related contractual breach. That is why *Castañeda* (and *Stoker*) held that “the failure to properly investigate a claim is not a basis for obtaining policy benefits.” *Castañeda*, 988 S.W.2d at 198.

Castañeda decides this case. Like *Castañeda*, *Menchaca* did not obtain a finding that USAA breached the contract. [App. 2; CR1:665](#). And there is no evidence to support damages, because none of USAA’s actions or inactions was the producing cause of any harm separate from what would have resulted from a wrongful denial of the claim. The only damages sought or awarded were policy benefits; *Menchaca* explicitly disclaimed mental anguish and consequential damages. RR6:7-10; CR1:21. Much like the charge in *Castañeda*, the charge here defined damages as “the difference, if any, between the amount USAA should have paid Gail *Menchaca* for her Hurricane Ike damages and the amount that was actually paid.”² [App.2; CR1:667](#). And *Menchaca* has never alleged, nor did she prove, that her damages resulted from “some act, so extreme” by USAA that it caused “injury independent of the policy.” *Stoker*, 903 S.W.2d at 341.

² The court of appeals stated that USAA failed to object to Question 3’s instruction that the jury answer the damages question if it either found either a breach or a statutory violation. *Menchaca*, 2014 WL 3804602, at *7. But USAA *did* object to the question, arguing that “the Texas courts have held that extra contractual damages need to be independent from policy damages.” RR10:37. USAA also tendered its own separate damages questions on the contractual and extra-contractual claims, which the trial court refused. CR1:114-137; RR10:38. The court’s suggestion that USAA waived error is wrong. *Menchaca*, 2014 WL 3804602, at *7 n.17.

1. *Castañeda*, not *Vail*, controls here.

The court of appeals cited *Castañeda* only in passing. *Menchaca*, 2014 WL 3804602, at *8, *9. Instead, the court of appeals (and *Menchaca*³) relied on *Vail v. Texas Farm Bureau Mutual Insurance Co.*, 754 S.W.2d 129 (Tex. 1988), to conclude that, while USAA cannot be said to have breached the policy, USAA still owed *Menchaca* policy benefits. In *Vail*, the Court stated that an insurer who violated the Insurance Code or the DTPA could be liable for policy benefits under those statutes: “an insurer’s unfair refusal to pay the insured’s claim causes damages as a matter of law in at least the amount of the policy benefits wrongfully withheld.” *Vail*, 754 S.W.2d at 136. For several reasons, *Vail* is either inapposite or no longer controlling.

First, in *Vail*, the insured proved that his insurer breached the contract and was liable, in addition, for extra-contractual torts. *Id.* at 136 (holding that evidence supported breach of contract claim, and plaintiff’s damages were, “at minimum, the amount of policy proceeds *wrongfully* withheld”) (emphasis added). Under *Vail*, a breach is a necessary predicate to extra-contractual liability. *Cf. United Nat’l Ins. Co. v. AMJ Invs., LLC*, ___ S.W.3d ___, No. 14-12-00941-CV, 2014 WL 2895003, at *9 (Tex. App.—Houston [14th Dist.] June 26, 2014, no pet. h.) (deciding that *Vail*,

³ See *Menchaca* Brief of Appellee/Cross-Appellant, at 26 (“*Vail* is dispositive of USAA’s complaint.”).

rather than *Castañeda*, controlled because the insured obtained a finding that the insurer breached the contract). There was no such finding here; just the opposite.

Second, *Vail* did not establish a blanket rule for all bad faith claims. This Court has cautioned that *Vail*'s holding should not be extrapolated to a claim involving a failure to properly investigate, which "do[es] not necessarily relate to the insurer's breach of its contractual duties to pay covered claims, and may give rise to different damage." *Twin City Fire Ins. Co. v. Davis*, 904 S.W.2d 663, 666 n.3 (Tex. 1995). And in at least three cases, this Court has refused to allow recovery of contract damages as a remedy for an allegedly improper investigation. *See Progressive Cnty Mut. Ins. Co. v. Boyd*, 177 S.W.3d 919 (Tex. 2005) (per curiam) (holding that even if trial court incorrectly granted summary judgment on failure-to-investigate claim, error was harmless because plaintiff "d[id] not allege that he suffered any damages unrelated to and independent of the policy claim"); *Castañeda*, 988 S.W.2d at 198; *Stoker*, 903 S.W.2d at 341.

Third, if *Vail* applies to a failure-to-investigate claim even when there is no finding of breach, it cannot be squared with *Castañeda*, which was decided a decade later and is directly on point.

With the exception of the court in this case, courts of appeals have generally interpreted *Castañeda* to permit recovery of extra-contractual damages only when an insured proves damages independent of those resulting from a wrongful denial of

policy benefits. *See, e.g., Laird v. CMI Lloyds*, 261 S.W.3d 322, 328 (Tex. App.—Texarkana 2008, pet. dismiss’d w.o.j.); *USAA v. Gordon*, 103 S.W.3d 436, 442 (Tex. App.—San Antonio 2002, no pet.). The United States Court of Appeals for the Fifth Circuit has embraced a similar reading of the Texas rule: “there can be no recovery for extra-contractual damages for mishandling claims unless the complained of actions or omissions caused injury independent of those that would have resulted from the wrongful denial of policy benefits.” *Great Am. Ins. Co. v. AFS/IBEX Fin. Servs. Inc.*, 612 F.3d 800, 808 n.1 (5th Cir. 2010). Other courts interpret *Castañeda* to apply only if an insured fails to prove a contractual breach. *See, e.g., United Nat’l Ins. Co.*, 2014 WL 2895003, at *9.

Even if the precise extent of *Castañeda*’s reach is debatable, this case falls squarely within its holding. The court of appeals’ contrary conclusion cannot stand.

2. The court of appeals’ attempts to distinguish relevant precedent are unavailing.

The court of appeals also focused on *Stoker*, which it found distinguishable. 2014 WL 3804602, at *9. The court recognized the “‘general rule’ that breach of the policy must be established before policy benefits may be recovered,” but held that this case presented an exception. *Id.* The court observed that *Stoker* involved a claim that was not covered. But here, the court wrote, “it was not ‘established’ that the policy provided no coverage for Menchaca’s claim.” *Id.* The court also disregarded the numerous authorities USAA cited, because “[m]ost of them involve

situations where the policy at issue was explicitly found not to cover the category of damages claimed by the plaintiff.” *Id.* at *8.

The court of appeals’ decision rests on the dubious distinction between a finding of no coverage, on the one hand, and no breach on the other. But the court never explains why that distinction should matter. In either case, the insurer is not obligated to pay policy benefits. *See, e.g., In re Allstate Cnty. Mut. Ins. Co.*, No. 01-14-00068-CV, 2014 WL 5285850, at *4 (Tex. App.—Houston [1st Dist.] Oct. 16, 2014, orig. proceeding) (“An insurer generally cannot be liable for failing to settle or investigate a claim that it has no contractual duty to pay.”). Under this Court’s precedent and the insurance contract, there is no basis for differentiating the two.

In *Stoker*, for example, the Court held that “there can be no claim for bad faith when an insurer has promptly denied a claim that is in fact not covered.” *Stoker*, 903 S.W.2d at 341. The statement was phrased in terms of “no coverage,” because the claim in that case was not covered. But the authorities *Stoker* cited made clear that the same rule applies when there has been *no breach* of the insurance policy: (i) a Fifth Circuit decision noted that Mississippi law did not support a bad faith recovery for the insured without first establishing “liability under the policy”; (ii) the Alabama Supreme Court held that the plaintiff seeking to recover on a bad faith claim must prove a breach of contract by the defendant; (iii) the Kentucky Supreme Court held that a bad faith claim requires proof that the insurer was obligated to pay

under the policy; (iv) the Rhode Island Supreme Court held that there can be no bad faith claim unless the insured establishes the insurer breached its duty under the contract; and (v) a leading treatise stated that extra-contractual recovery was prohibited when the insured is not entitled to benefits under the insurance contract. *Id.* (collecting authorities). And there is ample additional authority—aside from this Court’s own precedent⁴—to support that interpretation. *See, e.g., Capstone Bldg. Corp. v. Am. Motorists Ins. Co.*, 67 A.3d 961, 990 (Conn. 2013) (joining “the majority of jurisdictions to consider the matter” and holding that “in the absence of a breach of an express duty under the insurance policy, there is no independent cause of action for deficiencies in the insurer’s investigation”).

Additionally, Menchaca’s insurance contract states that a loss that fails to exceed the deductible is not a covered loss. The agreement “cover[s] only that part of the loss over the deductible stated.” DX1; RR17:9; RR17:11 (stating that insurance contract consists of the Declarations page, the policy, and applicable endorsements). USAA determined that Menchaca’s claim was below the deductible, and Menchaca failed to prove that this decision breached the policy. So even though wind damage was generally covered under the policy, Menchaca did not have a “covered” claim.

⁴ *Liberty Nat’l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996).

The court of appeals also distinguished *Gordon*, which it incorrectly described as a Texas Supreme Court case. *Menchaca*, 2014 WL 3804602, at *8. In *Gordon*, a jury found for the plaintiffs on their contractual and extra-contractual claims and awarded the identical amounts under both theories of recovery. The San Antonio Court of Appeals held that “[a]n insured is not entitled to recover extra-contractual damages unless the complained of actions or omissions cause injury independent of the injury resulting from a wrongful denial of policy benefits.” *Gordon*, 103 S.W.3d at 442. The court rendered judgment that the insured take nothing on his extra-contractual claims. *Id.* at 443.

The court of appeals in this case found *Gordon* distinguishable because the *Gordon* jury determined that USAA breached the insurance policy and awarded damages for that breach. Accordingly, the court stated that “an award of extra-contractual damages—where the only damages in evidence ‘stemmed from the denial of the claim’—would have constituted an impermissible double recovery.” *Menchaca*, 2014 WL 3804602, at *8. “Such circumstances are not present in this case,” the court reasoned. *Id.*

But the court of appeals’ analysis is wrong. The *Gordon* court did not render judgment against the plaintiff on the extra-contractual claims to avoid a double recovery. Even though the *Gordon* jury awarded identical amounts for the contractual and extra-contractual claims, the plaintiffs *elected* to recover only on the

extra-contractual claim. *Gordon*, 103 S.W.3d at 438. So double recovery was not an issue. The *Gordon* court rendered judgment against the plaintiffs on the extra-contractual claims because policy benefits were not recoverable as damages for that claim. If extra-contractual damages were legally permissible, the *Gordon* plaintiffs' election of remedies would have been proper. Only after reversing the extra-contractual award did the *Gordon* court affirm the trial court's *conditional* contractual damages award. *Id.* at 437. The court of appeals' reasoning to the contrary is not supportable.

Finally, the court of appeals stated that "USAA has not directed us to any cases, nor can we find any, involving a situation such as this one where: (1) the insurer complied with the policy, but (2) nonetheless violated the insurance code, and (3) the insurer *would have been* contractually obligated to pay policy benefits had the insurer complied with the insurance code." *Menchaca*, 2014 WL 3804602, at *9 (emphasis added). But the "situation" the court described is not presented in this case. There was no determination that USAA would have been *contractually obligated* to pay policy benefits had it conducted a more thorough investigation. As this Court has recognized, a failure to investigate can never cause damages in the form of policy benefits—those are caused by a contractual breach. *Castañeda*, 988 S.W.2d at 201.

So the jury's damage award cannot be viewed as a finding of contractual liability, and USAA directed the court to a case so holding: *Castañeda*. The *Castañeda* jury charge defined the damages as "the amount of benefits due under the policy." *Castañeda*, 914 S.W.2d at 281. This Court held that, absent a separate breach-of-contract finding, a failure to investigate could not support recovery of that amount. *Castañeda*, 988 S.W.2d at 201. The same is true here.

3. USAA is entitled to rendition of judgment.

Because the extra-contractual claims and damages were not supported by legally sufficient evidence, the judgment (including the attorney's fee award) cannot stand. *See Castañeda*, 988 S.W.2d at 201; *see also* TEX. INS. CODE § 541.152; *State Farm Life Ins. Co. v. Beaton*, 907 S.W.2d 430, 437-38 (Tex. 1995) (holding that attorney's fee award under Insurance Code requires that party (1) prevail on a cause of action for which fees are recoverable, and (2) recover damages).

II. The trial court improperly disregarded the jury's failure to find a contractual breach.

Although this Court's precedent requires rendition of judgment for USAA even if no breach of contract claim had been submitted, *see Castañeda*, 988 S.W.2d at 201, the trial court erred in disregarding the jury's negative answer to the contract-breach submission. Concluding that the question (which *Menchaca* had requested) was "poorly worded" and lacked adequate definitions, the trial court decided it was free to "ignore" Question No. 1, which asked whether USAA failed to comply with

the policy. *See Menchaca*, 2014 WL 2804602, at *4 n.12. The trial court determined that the jury’s response was “meaningless.” *Id.*

Breach of contract was pleaded, tried, argued, submitted, and answered by the jury. How can the question be immaterial when it supports a take-nothing judgment in USAA’s favor? It is certainly material to USAA, and its submission is the culmination of a lawsuit that Menchaca initiated for an alleged contractual breach.

The question tracked the Pattern Jury Charge and complied with Rule 277’s mandate for broad-form questions when feasible. *See* TEX. R. CIV. P. 277; Comm. on Pattern Jury Charges, Texas Pattern Jury Charges—Contracts 101.2 (State Bar of Texas 2012). A trial court may disregard a jury finding only if it is unsupported by evidence or if the issue is immaterial. *Spencer v. Eagle Star Ins. Co.*, 876 S.W.2d 154, 157 (Tex. 1994). A question is immaterial when it should not have been submitted, or when it was properly submitted but has been rendered immaterial by other findings. *Id.* Even a defective question may not be disregarded as immaterial. *Id.* And a trial court’s judgment must conform to the pleadings, the nature of the case proved, and the verdict. TEX. R. CIV. P. 301.

The trial court characterized its judgment as a victory for USAA and a “small victory for the plaintiff.” *Menchaca*, 2014 WL 3804602, at *4 n.12. “Small victories” like these, when extrapolated to the thousands of storm-related claims pending in Texas courts, will have a monumentally devastating impact. This Court

must ensure that any victory, however “small,” is supported by the law. This one was not.

CONCLUSION AND PRAYER

“The threshold of bad faith is reached when a breach of contract is accompanied by an independent tort.” *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 17 (Tex. 1994). This case never met that threshold. USAA requests that the Court grant this petition for review, reverse the court of appeals’ judgment, and render judgment that Menchaca take nothing. USAA also requests all other relief to which it is entitled.

Respectfully submitted,

ALEXANDER DUBOSE
JEFFERSON & TOWNSEND LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
Telephone: (512) 482-9300
Facsimile: (512) 482-9303

By: /s/ Wallace B. Jefferson

Wallace B. Jefferson
State Bar No. 00000019
wjefferson@adjtlaw.com
Rachel A. Ekery
State Bar No. 00787424
rekery@adjtlaw.com

COUNSEL FOR PETITIONER
USAA TEXAS LLOYDS COMPANY

CERTIFICATE OF SERVICE

On November 14, 2014, I electronically filed this petition for review with the Clerk of Court using the eFile.TXCourts.gov electronic filing system which will send notification of such filing to the following:

Gilberto Hinojosa
State Bar No. 09701100
ghinojosa@ghinojosalaw.net
LAW OFFICE OF GILBERTO
HINOJOSA & ASSOCIATES, P.C.
622 E. Saint Charles Street
Brownsville, Texas 78520
Telephone: (956) 544-4218
Facsimile: (956) 544-1335

Richard P. Hogan, Jr.
State Bar No. 09802010
rhogan@hoganfirm.com
Jennifer Bruch Hogan
State Bar No. 03239100
jhogan@hoganfirm.com
HOGAN & HOGAN
Two Houston Center
909 Fannin, Suite 2700
Houston, Texas 77010
Telephone: (713) 222-8800
Facsimile: (713) 222-8810

J. Steven Mostyn
State Bar No. 00798389
jmostyn@mostynlaw.com
THE MOSTYN LAW FIRM
3810 West Alabama Street
Houston, Texas 77027
Telephone: (713) 861-6616
Facsimile: (713) 861-8084

Randal Cashiola
State Bar No. 3966802
rcashiola@cashiolalaw.com
CASHIOLA & BEAN
2090 Broadway Street, Suite A
Beaumont, Texas 77701-1944
Telephone: (409) 813-1443
Facsimile (409) 813-1467

Bruce E. Ramage
State Bar No. 16492500
ramage@mdjwlaw.com
Levon G. Hovnatanian
State Bar No. 10059825
hovnatanian@mdjwlaw.com
Robert T. Owen
State Bar No. 24060370
owen@mdjwlaw.com
MARTIN, DISIERE, JEFFERSON
& WISDOM, LLP
808 Travis, 20th Floor
Houston, Texas 77002
Telephone: (713) 632-1700
Facsimile: (713) 222-0101

*Attorneys for Petitioner
in the Trial Court and
Court of Appeals*

/s/Wallace B. Jefferson
Wallace B. Jefferson

CERTIFICATE OF COMPLIANCE

Based on a word count run in Microsoft Word 2013, this brief contains 4,495 words, excluding the portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/Wallace B. Jefferson
Wallace B. Jefferson

APPENDIX

Tab Item

1. Trial Court's Judgment (CR1:716-19)
2. Jury Charge (CR1:662-74)
3. Court of Appeals' Opinion
4. Court of Appeals' Judgment
5. Homeowners' Insurance Policy (DX1; RR17:4-62)
6. Insurance Code § 541.060
7. Insurance Code § 541.151
8. Insurance Code § 541.152
9. *Ike's Insured Losses Total Almost \$12 Billion*, DALLAS MORNING NEWS, Jan. 29, 2010

APPENDIX 1

CAUSE NO. 09-05-04702-CV

GAIL MENCHACA,
Plaintiff,

vs.

USAA TEXAS LLOYD'S
COMPANY AND DARBY
HAMBRICK,
Defendants.

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IN THE DISTRICT COURT OF

MONTGOMERY COUNTY, TEXAS

9TH JUDICIAL DISTRICT

FINAL JUDGMENT

On the 10th day of September 2012, came on to be heard the above-entitled and numbered cause. Plaintiff Gail Menchaca appeared in person, and by and through her counsel, and announced ready for trial. Defendant USAA Texas Lloyd's appeared in person, and by and through its counsel, and announced ready for trial. This court has jurisdiction over the parties and subject matter of this cause.

A jury consisting of 12 good and qualified jurors was selected and the case proceeded to trial. At the close of the evidence, the Court submitted its charge to the jury. The jury retired to deliberate, and after deliberating, announced in open court that it had reached a verdict on September 19, 2012. The court received and filed the jury's verdict and discharged the jury.

The Court now disregards the jury's answers to Question No. 1 and subparts (B) through (E) of Question No. 6.

The Court renders judgment in favor of Gail Menchaca and against USAA Texas Lloyd's based upon the jury's answers to question number 2; question no. 3, and subpart

(A) of question no. 6. Furthermore, the Court renders judgment in favor of Gail Menchaca Gail Menchaca and against USAA Texas Lloyd's based upon the uncontroverted testimony of plaintiff's attorneys' fees expert, Randall Cashiola, regarding the reasonable fees for the necessary services of Gail Menchaca's attorneys for representation through appeal to the court of appeals and for representation of through appeal to the Texas Supreme Court. Gail Menchaca is entitled to judgment against USAA Texas Lloyd's based upon these liability and damages findings in favor of the plaintiff.

The past damages of Gail Menchaca are \$11,350. Gail Menchaca is entitled to prejudgment interest on these damage awards, beginning on May 14, 2009, and ending on the day before the judgment is signed. The prejudgment interest rate is 5% per year, simple interest. Prejudgment interest through November 1, 2012 is \$1,969.92. Prejudgment interest will continue to accrue from November 1, 2012 until the day before this Judgment is signed at the rate of \$1.55 per day.

Gail Menchaca is entitled to additional interest on the damage award, beginning on January 23, 2009, and ending on the day the judgment is signed. The additional interest rate is 18% per year, simple interest. Additional interest through November 2, 2012 is \$7,718.62. Additional interest will continue to accrue from November 2, 2012 until the day this Judgment is signed at the rate of \$5.60 per day.

Gail Menchaca is entitled to recover from USAA Texas Lloyd's all taxable court costs in the amount of \$13,332.45.

Gail Menchaca is entitled to recover from USAA Texas Lloyd's the reasonable fees for necessary services of her attorneys' in this case for representation in the trial court of \$130,000.00. Further, Gail Menchaca is entitled to recover the reasonable fees for necessary services of her attorneys' for representation through appeal to the court of appeals of ~~\$50,000.00~~ ^{65,000.00} in the event Gail Menchaca is successful in any proceedings before the court of appeals. Gail Menchaca is also entitled to recover the reasonable fees for necessary services of her attorneys' for representation through appeal to the Supreme Court of Texas of ~~\$25,000.00~~ ^{18,000.00} in the event Gail Menchaca is successful in any proceedings before the Supreme Court of Texas.

Gail Menchaca is entitled to recover from USAA Texas Lloyd's postjudgment interest past damages, attorneys' fees through and including trial, prejudgment interest, additional interest, and court costs awarded in this judgment at the legal rate of 5% per year, compounded annually, beginning on the day this judgment is signed, until the judgment is paid.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

(1) Gail Menchaca shall have and recover of and from USAA Texas Lloyd's the sum of \$164,371.00, inclusive of past damages, prejudgment interest, additional interest, attorneys' fees for representation in the trial court, and taxable court costs, for which let execution issue;


(2) Gail Menchaca shall have and recover of and from USAA Texas Lloyd's postjudgment interest at the rate of 5% per year, compounded annually, on the amount of \$164,371.00, beginning on the date this judgment is signed, until that amount is paid;

(3) Gail Menchaca shall have and recover of and from USAA Texas Lloyd's the sum of ~~\$50,000.00~~⁵⁰⁰⁰ in the event Gail Menchaca is successful in any party's appeal to the court of appeals; and

(4) Gail Menchaca shall have and recover of and from USAA Texas Lloyd's the sum of ~~\$25,000.00~~^{10,000} in the event Gail Menchaca is successful in any party's appeal to the Supreme Court of Texas.

All relief not herein expressly granted is denied. This Final Judgment disposes of all claims between all parties and is a final, appealable judgment.

Signed this 7 day of Nov, 2012.



Presiding Judge

APPENDIX 2

CAUSE NO. 09-05-04702-CV

GAIL MENCHACA
PLAINTIFF,

V.

USAA TEXAS LLOYD'S COMPANY
DEFENDANT

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IN THE DISTRICT COURT OF

MONTGOMERY COUNTY TEXAS

9TH JUDICIAL DISTRICT

RECEIVED AND FILED
AT 11:00 AM
SEP 19 2012
BARBARA ADAMICK
CLERK
MONTGOMERY COUNTY TEXAS
By *Barbara Adamick*

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.
10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would

waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

QUESTION NO. 1:

1. Did USAA Texas Lloyd's Company ("USAA") fail to comply with the terms of the insurance policy with respect to the claim for damages filed by Gail Menchaca resulting from Hurricane Ike?

Answer "Yes" or "No".

Answer: No

QUESTION NO. 2:

2. Did USAA engage in any unfair or deceptive act or practice that caused damages to Gail Menchaca?

Answer "Yes" or "No" as to each subpart.

"Unfair or deceptive act or practice" means any one or more of the following:

- A. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the liability under the insurance policy issued to Gail Menchaca had become reasonably clear; or

Answer: NO

- B. Failing to promptly provide to Gail Menchaca a reasonable explanation of the factual and legal basis in the policy for the denial of a claim(s); or

Answer: NO

- C. Failing to affirm or deny coverage within a reasonable time; or

Answer: NO

- D. Refusing to pay a claim without conducting a reasonable investigation with respect to a claim(s); or

Answer: YES

- E. Misrepresenting to Gail Menchaca a material fact or policy provision relating to the coverage at issue.

Answer: NO

If you answered "Yes" to Question No. 1 or any part of Question 2 or both questions, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 3:

3. What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Gail Menchaca for her damages, if any, that resulted from the failure to comply you found in response to Question number 1 and/or that were caused by an unfair or deceptive act that you found in response to Question number 2.

The sum of money to be awarded is the difference, if any, between the amount USAA should have paid Gail Menchaca for her Hurricane Ike damages and the amount that was actually paid.

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any.

Answer: \$ 11,350.00

If you answered yes to Question No. 3, then answer the following Question No. 3a. Otherwise, do not answer Question No. 3a.

QUESTION NO. 3a:

3a. Do you find from a preponderance of the evidence that Gail Menchaca could have avoided her damages, if any, through the exercise of reasonable care in protecting the property from further damage or making reasonable and necessary repairs.

Answer "Yes" or "No".

Answer: No

If you answered yes to Question No. 3a, then answer the following Question No. 3b. Otherwise, do not answer Question No. 3b

QUESTION NO. 3b:

3b. By what amount of money, if any, should Gail Menciahca's damages be reduced due to her failure to exercise reasonable care to avoid her damages?

Answer in dollars and cents for damages, if any.

Answer: N/A

If you answered "Yes" to any subpart of Question 2, then answer the following Question No. 4. Otherwise, do not answer the following Question No. 4 and skip to Question No. 6.

QUESTION NO.4:

4. Did USAA engage in any such conduct knowingly?

"Knowingly" means actual awareness of the falsity, unfairness, or deceptiveness of the act or practice on which a claim for damages is based. Actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you found resulted in damages to Gail Menchaca.

Answer "Yes" or "No".

Answer: NO

If you have answered "Yes" to Question No. 4, then answer the following Question No. 5. Otherwise, do not answer the following Question No. 5 and skip to Question No. 6.

QUESTION NO. 5:

5. What sum of money, if any, in addition to actual damages, should be awarded to Gail Menchaca against USAA because USAA's conduct was committed knowingly?

INSTRUCTIONS

The factors to consider in awarding additional damages, if any, include:

- (a) The nature of the wrong;
- (b) The character of the conduct involved;
- (c) The degree of culpability of USAA;
- (d) The situation and sensibilities of the parties; and
- (e) The extent to which the conduct in question offers a public sense of justice and propriety

Answer in dollars and cents, if any:

Answer: \$ N/A

If you answered "Yes" to any part of Questions 1 or any part of Question 2, then answer the following Question No. 6. Otherwise, do not answer the following Question No. 6.

QUESTION NO. 6:

6. What is a reasonable fee for the necessary services of Gail Menchaca's attorneys in this case, stated in dollars and cents?

Answer with an amount for each of the following:

- A. For representation in the trial court

Answer: \$ 130,000.00

- B. For representation through appeal to the court of appeals.

Answer: \$ NO

- C. For representation at the petition for review stage in the Supreme Court of Texas.

Answer: \$ NO

- D. For representation at the merits briefing stage in the Supreme Court of Texas.

Answer: \$ NO

- E. For representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

Answer: \$ NO

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict. If 11 jurors agree on every answer, those 11 jurors sign the verdict. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.



Judge Presiding

Verdict Certificate

Check one:

Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

✓ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

1. Melanie Smith

MELANIE SMITH

2. Mark R Strace

MARK R STRACE

3. [Signature]

JOHN HODGES

4. Kathy Murdock

Kathy Murdock

5. David Scott Carpenter

David Scott Carpenter

6. Robert A. Hawne

Robert A. HAWNE

7. Jason Hancock

Jason Hancock

8. Benjamin E. Schmidt

Benjamin E. Schmidt

9. Tracey Wilson

Tracey Wilson

10. Karen Chaney

KAREN CHANEY

11. _____

APPENDIX 3

2014 WL 3804602

Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

MEMORANDUM OPINION

Court of Appeals of Texas,
Corpus Christi–Edinburg.

USAA TEXAS LLOYD'S COMPANY, Appellant,

v.

Gail MENCHACA, Appellee.

No. 13–13–00046–CV. | July 31, 2014.

On appeal from the 9th District Court of Montgomery County, Texas.

Attorneys and Law Firms

Christopher W. Martin, Levon G. Hovnatanian, Kevin G. Cain, for USAA Texas Lloyd's Company.

Ray A. Burgess, Jennifer Bruch Hogan, Richard P. Hogan, J. Steve Mostyn, Randal Cashiola, for Gail Menchaca.

Before Justices RODRIGUEZ, GARZA and BENAVIDES.

MEMORANDUM OPINION

Memorandum Opinion by Justice GARZA.

*1 This case involves a claim made by appellee, Gail Menchaca, on her homeowner's insurance policy with appellant, USAA Texas Lloyd's Company ("USAA"). A Montgomery County jury found that USAA did not breach the policy, but that it violated an insurance code provision by denying Menchaca's claim without conducting a reasonable investigation. The jury awarded \$11,350 in damages as well as \$130,000 in trial attorney's fees to Menchaca. The trial court rendered judgment on the verdict and imposed an 18 percent penalty interest rate pursuant to the insurance code. *See* [TEX. INS.CODE ANN. § 542.060](#) (West, Westlaw through 2013 3d C.S.). The final judgment additionally awarded conditional appellate attorney's fees to Menchaca. USAA challenges the judgment by five issues, arguing: (1) the trial court erred in disregarding the jury's finding that it did not breach the policy; (2) the trial court erred in awarding extra-contractual damages; (3) there was no

evidence to support the jury's damages finding; (4) the award of attorney's fees and penalty interest should be reversed; and (5) Menchaca failed to segregate recoverable from non-recoverable attorney's fees. Menchaca raises one issue on cross-appeal. We affirm as modified.¹

¹ This appeal was transferred from the Ninth Court of Appeals to this Court pursuant to a docket equalization order issued by the Texas Supreme Court. *See* [TEX. GOV'T CODE ANN. § 73.001](#) (West, Westlaw through 2013 3d C.S.).

I. BACKGROUND

Hurricane Ike, the costliest storm in Texas history,² struck the gulf coast in September 2008. About six weeks later, Menchaca noticed that some shingles on her roof were "billowing" and "lifting up and down," and she called USAA to make a claim under her homeowner's insurance policy. Menchaca testified that she informed USAA of the possible roof damage, "food damage" in her refrigerator due to prolonged loss of electricity, a detached electrical box, a broken sprinkler system, and a damaged fence. According to USAA, Menchaca expressed concern about her roof, electrical system, fence,³ and air conditioning units.

² *See* Eric Berger, *Texas' list of 10 costliest storms tell us nothing of the real risk the state faces*, Hous. Chron. (June 11, 2009), <http://blog.chron.com/sciguy/2009/06/texas-list-of-10-costliest-stormstell-us-nothing-of-the-real-risk-the-state-faces> (last visited July 23, 2014).

³ A claim activity log produced at trial showed that USAA received a call from Menchaca on October 28, 2008. The log entry stated: "there is some [damage] to shingles are missing or [damaged] [sic]; a/c is working but would like looked at; commode has low water level; power line has yanked line away from home; [Menchaca] would like to have [USAA] adjuster to handle."

USAA assigned Darby Hambrick, an independent claims adjuster, to investigate Menchaca's claim. In early November of 2008, Hambrick inspected Menchaca's roof and found three missing ridge shingles on the front right gable which he thought might have been attributable to the storm, but he noticed no other loose or unsealed shingles. He also observed that the electrical box had been detached from the side of the house. He found no visible damage to the interior of the house or the air conditioning units, and he did not find any

visible damage to the fence other than “normal wear and tear.” Hambrick estimated the total repair cost at \$700, comprising \$455 to replace the missing shingles and \$245 to reattach the electrical box. However, the deductible under the policy was \$2,020. Accordingly, USAA sent Menchaca a letter on December 9, 2008, explaining that this type of loss is covered under her policy, but that USAA owed no payment because the repairs for the damage identified by Hambrick did not exceed the deductible.

At some point, USAA assigned one of its employees, field adjuster David Glover, to conduct a re-inspection of the house. Glover found no impact damage nor any torn, creased, or bent-back shingles. He did find “a few” unsealed shingles on the roof, but he concluded that this was not caused by the storm.⁴ According to Glover, Menchaca reported no damage to the interior nor did she mention anything about damage to the fence.

⁴ Glover explained that a strip of sealant is located on the top surface of the shingle which is supposed to adhere to the underside of the overlapping shingle. Glover concluded that the unsealed shingles he observed had never been sealed because, if they were sealed and then pulled loose by the wind, the sealant strips would have been damaged. But the sealant strips on the unsealed shingles he observed were not damaged. Moreover, he did not find any sealant on the underside of the overlapping shingles.

*2 Menchaca filed suit against USAA on June 22, 2009, alleging breach of the policy, fraud, and various violations of the insurance code.⁵ *See id.* § 541.151 (West, Westlaw through 2013 3d C.S.) (establishing a private cause of action based on an “unfair method of competition or an unfair or deceptive act or practice in the business of insurance” as defined in the insurance and business and commerce codes). Menchaca requested treble damages, exemplary damages, attorney's fees, and penalty interest.⁶

⁵ Menchaca also sued Hambrick, but later non-suited her claims against him. Hambrick is not a party to this appeal.

⁶ A notice letter sent by Menchaca's counsel to USAA, a copy of which was attached to Menchaca's petition, demanded \$1,245,355.25 in economic damages, \$50,000 in mental anguish damages, and \$481,785.08 for “expenses” including attorney's fees.

At trial, USAA stipulated to the reasonableness of an estimate of electrical repairs prepared by Menchaca's electrician, John

Moore, totaling more than \$3,300. As to the other alleged storm damages, the parties each relied on expert testimony. One of Menchaca's experts, engineer Greg Becker, testified that he inspected the house and concluded that the entire roof needed to be replaced. He testified that the “lifted shingles” were “caused by wind.” He stated that, according to official weather data, the wind speed at Menchaca's home at the time of the storm “was 80 to 85 sustained miles per hour and 99 to 103 gust, 3–second gust.” When asked whether all the shingles had been sealed prior to the storm, Becker stated: “I have to make a judgment of that in the field, and I do believe they were sealed.” Becker elaborated:

I would say that the shingles were sealed because there was adhesive on the shingles. We're in a hot climate. They were good shingles. There wasn't any adhesive missing. They were laying flat. They were well installed, and that's my judgment that supports that they were sealed before they were lifted. In addition to the “lifted shingles” on “most of the roof” and the detached electrical box, Becker also found “separations on the exterior,” “[s]ome small separations in brick,” “[s]ome trim separations,” a “[s]mall piece of damaged gutter in the back,” damage to “[s]ome individual segments of fencing in the rear yard,” and a “gate that was not working as part of the fence and front-left side .” In the interior, Becker found “some water damage,” “rafter separation,” and a “ceiling crack.” Becker testified that this damage was “hurricane damage” and that “we rule out ... non-hurricane damage.”

Another expert witness, Darrell Quinney, testified that he inspected the roof in June of 2009 and estimated the repair costs to be \$29,600, entailing full replacement of the roof. He stated that “[t]he visible damage that I saw to the roof was very significant. Significant enough to warrant replacement without even checking to see if the shingles had been lifted.” Quinney testified:

There were numerous impact damages to every slope.... I mean there were torn shingles. There were holes in shingles. There were ripped shingles. There were numerous damages that told me or made me firmly believe that the roof was impacted in several places by the blowing debris of the storm.

*3 Quinney further estimated fence repair costs at \$4,700 and electrical box reattachment costs at \$251. Quinney later re-inspected the house in May 2010 and recalculated the

roof repair estimate to be approximately \$22,000.⁷ The total estimate for repairs to Menchaca's house in the May 2010 estimate was \$38,439. In January of 2011, Quinney prepared a third estimate, based on another inspection as well as a report authored by Becker. The third estimate included approximately \$24,000 for repairs to the interior damage identified by Becker, as well as repairs to exterior siding and trim which had not been previously included. The total repair cost quoted in Quinney's January 2011 estimate was \$76,348. Quinney testified that this amount is reasonable.

⁷ Quinney stated that the figure had been reduced because, initially, he “suspect[ed] there to be some decking damage below the shingles” and therefore “included 25 percent replacement of the deck” in his original estimate. He stated, “when I prepared estimate number two, I took those worst case scenarios out.”

USAA's expert, civil engineer Mark Kubena, examined Menchaca's roof and stated that the unsealed shingles showed no sign of wind damage. He testified that the natural expansion and contraction of shingles due to temperature changes may, over the course of many years, cause shingles to become unsealed. According to Kubena, though many shingles were unsealed, they were not cracked or creased as would be expected if they had been lifted by hurricane-force wind. Kubena further stated that the shingles were rated to withstand winds of 90 to 110 miles per hour, but that the top wind speed at the height of the roof during Hurricane Ike was only, in his opinion, approximately 82 miles per hour.⁸ Another expert, Ronald Simmons, an electrical engineer, testified on USAA's behalf that the electrical box needed to be reattached to the side of the house but that there was no other damage to the house's electrical system.

⁸ Kubena stated that the “three-second gust” wind speed, according to weather data, was at most 103 miles per hour. However, Kubena explained that this figure must be corrected because it is measured by anemometers located at a height of ten meters and in an “Exposure C category,” or open terrain. Menchaca's house was located in an “Exposure B category” terrain—that is, among “surrounding obstructions such as trees and buildings and things of that nature”—and was less than ten meters in height. Therefore, Kubena reduced the “three-second gust” wind speed by approximately 20 percent.

Hambrick testified that his initial inspection of Menchaca's house lasted forty-five minutes. He reiterated his inspection findings at trial. Hambrick denied that Menchaca reported “food damage” or any concerns other than those she originally

reported to USAA. He stated that, if Menchaca had reported food spoilage, he would have included that in the estimate. When counsel told Hambrick that Menchaca previously testified that she told him that she had a food loss, but that Hambrick told her that it was below her deductible, Hambrick replied: “That would be a bad thing to say because food loss doesn't apply to that [deductible]. That's a separate entity, separate set of coverages. It has nothing to do with wind claim or anything else. It's a separate coverage that USAA extends to their members for general power outages.”

The case was submitted to the jury. Question number one of the jury charge asked if USAA “fail[ed] to comply with the terms of the insurance policy with respect to the claim for damages made by [Menchaca] resulting from Hurricane Ike.”⁹ The jury answered “no.” Question number two asked whether USAA “engage[d] in any unfair or deceptive act or practice that caused damages” to Menchaca. The question was accompanied by an instruction defining “unfair or deceptive act or practice” as “any one or more of the following”:

⁹ The insurance policy contained the following section entitled “Appraisal”:

If you and we do not agree on the amount of loss, either party can demand that the amount of the loss be determined by appraisal. If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand.

The two appraisers will then select a competent, impartial umpire. If the two appraisers are not able to agree upon the umpire within 15 days, you and we can ask a judge of a court of record in the state where the residence premises is located to select an umpire.

The appraisers will then set the amount of loss. If they submit a written report of any agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree within a reasonable time, they will submit their differences to the umpire. Written agreement signed by any two of these three will set the amount of the loss. Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be equally paid by you and us.

“[A]n appraisal award made pursuant to an insurance policy is binding and enforceable unless the insured proves that the award was unauthorized or the result of fraud, accident, or mistake.” *Toonen v. United Servs. Auto. Ass'n*, 935 S.W.2d 937, 940 (Tex.App.-

[San Antonio 1996, no writ](#)). However, despite the fact that Menchaca and USAA clearly disagreed on the amount of loss, it does not appear that either party attempted to invoke this section by making a written demand for appraisal.

- *4 A. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim when the liability under the insurance policy issued to [Menchaca] had become reasonably clear; or
- B. Failing to promptly provide to [Menchaca] a reasonable explanation of the factual and legal basis in the policy for the denial of a claim(s); or
- C. Failing to affirm or deny coverage within a reasonable time; or
- D. Refusing to pay a claim without conducting a reasonable investigation with respect to a claim(s); or
- E. Misrepresenting to [Menchaca] a material fact or policy provision relating to the coverage at issue.

See id. § 541.060(a)(1), (a)(2)(A), (a)(3), (a)(4)(A), (a)(7)(A) (West, Westlaw through 2013 3d C.S.). The jury answered “yes” to part D but “no” to the remaining parts of question number two.¹⁰

- ¹⁰ In response to question number four, the jury found that USAA did not “engage in ... such conduct knowingly,” thereby precluding Menchaca’s recovery of treble damages under the insurance code. *See Tex. Ins.Code Ann. § 541.152(b)* (West, Westlaw through 2013 3d C.S.) (“[O]n a finding by the trier of fact that the defendant knowingly committed the act complained of, the trier of fact may award an amount not to exceed three times the amount of actual damages.”).

Question number three¹¹ asked the jury:

- ¹¹ The jury was instructed to answer this question if it answered “yes” to question number one or any part of question number two, or both.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Gail Menchaca for her damages, if any, that resulted from the failure to comply you found in response to Question number 1 and/or that were caused by an unfair or deceptive act that you found in response to Question number 2[?]

The question included an instruction stating that “[t]he sum of money to be awarded is the difference, if any, between the amount USAA should have paid [Menchaca] for her Hurricane Ike damages and the amount that was actually paid.” The jury answered, “\$11,350.00.” The jury further found that Menchaca could not have avoided her damages “through the exercise of reasonable care in protecting the property from further damage or making reasonable and necessary repairs.”

Finally, the jury was asked in question number six to assess “a reasonable fee for the necessary services of [Menchaca]’s attorneys in this case.” The jury found that \$130,000 was reasonable “[f]or representation in the trial court” but answered “No” with respect to appellate attorney’s fees.

After the jury returned its verdict, USAA moved for entry of judgment in its favor on the basis that, “when no breach of contract is found, there can be no bad faith or extra-contractual liability as a matter of law.” USAA argued that, because the jury found no breach of contract, Menchaca could not recover on her extra-contractual claims. USAA further argued in its motion that there is no evidence that any failure to investigate caused damage to Menchaca. In her own motion for entry of judgment, Menchaca asserted that the jury’s “no” answer to question number one should be disregarded because it is immaterial. Instead, Menchaca argued that judgment in her favor is mandated by the jury’s findings as to questions two and three. Menchaca further asked that the jury’s award of zero appellate attorney’s fees be disregarded because it is supported by no evidence.

In its final judgment, the trial court granted Menchaca’s request to disregard the jury’s answers as to the breach of contract¹² and appellate attorney’s fees questions. The final judgment awarded \$164,371, including past damages, 5% prejudgment interest and 18% penalty interest on the damages award, as well as trial attorney’s fees and court costs. The final judgment also awarded conditional appellate attorney’s fees of \$5,000 for court of appeals proceedings, and \$10,000 for Texas Supreme Court proceedings. USAA filed a motion for new trial which was denied, and this appeal followed.

- ¹² At the hearing on the parties’ motions for entry of judgment, the trial court explicitly stated that it intended to “ignore” the jury’s answer to question number one. In doing so, it gave the following explanation:

[The jury] looked at the electrical work that was done, the other damages, the fence, the other things that came up during the trial. And they gave a

value to that. I think that's what they did. And I think they believed that the adjuster failed to give a reasonable inspection, failed to make a-was just in a hurry, made a pit stop, said you don't qualify, and he left. And I think they thought that was unreasonable behavior. That's the way they answered the question, the way the question was drawn. So the real question is whether or not that failure to say breach of contract in question number one, does that just end the whole case? I mean, by saying no-but look at the question again. It says, "Breach of contract," but it doesn't say what kind of breach. It doesn't even explain breach of contract. It doesn't even give a definition for breach of contract. There's all kinds of other things that should have been put in there about what's material breach, definition of material breach. The question fails altogether. It shouldn't have been submitted in the first place. If you remember correctly, I didn't want that question submitted. But it was insisted upon by the plaintiffs, so they've got to reap what they sow. But I think that I can easily ignore question number one as being incomprehensible to a layman and that it has no effect. I can go with what I wanted to go with in the first place which was question number two, damage question, then attorney's fees. That's what I'm going to do. I'm going to ignore question number one entirely because I think it was poorly worded. It did not have adequate definitions with it to aid the jurors. I think its response is meaningless. So it's a small judgment victory for the plaintiffs. I think it's a victory for the insurance company because USAA is vindicated about the shingles. And that just because the shingles got blown up and came back down again doesn't mean you get a new roof. I think that's what the jury said. So in a way you won as well as a small victory for the plaintiffs.

II. DISCUSSION

A. Extra-Contractual Claims

*5 By its second issue, USAA argues that, because the jury found no breach of contract, Menchaca's extra-contractual claims must fail as a matter of law. In support of this issue, USAA relies primarily on the Texas Supreme Court's opinion in *State Farm Lloyds v. Page*, 315 S.W.3d 525 (Tex.2010). In that case, the plaintiff homeowner sued her insurer, contending that the insurer failed to pay for covered mold damage caused by plumbing leaks. *Id.* at 527. The Court held that the policy at issue provided coverage for mold damage to personal property but not for mold damage

to the dwelling itself. *Id.* at 530–31. Summary judgment in favor of the insurer was therefore improper with respect to the plaintiff's claim for mold damage to personal property but proper with respect to the plaintiffs claim for mold damage to her dwelling. *Id.* Crucially for our purposes, in addition to her breach of contract claim, the plaintiff also brought extra-contractual claims including violations of the insurance code. *Id.* at 527, 532. The Court noted that, "[w]hen the issue of coverage is resolved in the insurer's favor, extra-contractual claims do not survive." *Id.* at 532 (citing *Progressive Cnty. Mut. Ins. Co. v. Boyd*, 177 S.W.3d 919, 922 (Tex.2005) ("There can be no liability under article 21.55 if the insurance claim is not covered by the policy.")). The Court stated that "[t]here can be no liability under either Article 21.55 or Article 21.21 of the Insurance Code[] if there is no coverage under the policy" but that, "to the extent the policy affords coverage, extra-contractual claims remain viable." *Id.* The Court therefore held that, to the extent the plaintiff's extra-contractual claims are based on the insurer's denial of coverage for mold damage to her dwelling, they cannot survive. *Id.* But to the extent the plaintiff's extra-contractual claims were based on denial of her claims for mold damage to her personal property, those claims were remanded to the trial court for further proceedings. *Id.*

USAA argues on appeal that the jury's answer to question number one is tantamount to a finding that the insurance policy at issue did not cover the damages to Menchaca's property, and that under *Page*, this finding of no coverage precluded recovery under any extra-contractual theory.

We disagree for two reasons. First, a claim based on the particular insurance code provision which the jury found USAA violated in this case is arguably not barred by a finding of no coverage. That provision, section 541.060 of the insurance code, is not among those mentioned by the Court in *Page*, and for good reason. The statutes mentioned in *Page* deal with prompt payment of claims. *See id.*¹³; TEX. INS.CODE ANN. §§ 542.051–.061, 543.001, 551.001–.454 (West, Westlaw through 2013 3d C .S.). Extra-contractual claims based on these statutes are naturally precluded when there is a finding of no coverage-after all, it would be absurd to allow a plaintiff to recover damages on the basis that the insurer failed to promptly pay a claim if the claim was not covered by the policy in the first place. On the other hand, section 541.060 deals with unfair settlement practices, and in particular, subsection (a)(7) of section 541.060 deals with reasonable investigations. There appears to be nothing in the insurance policy itself requiring USAA either (1) to conduct

a reasonable investigation prior to denying a claim, or (2) to cover all damages that would be identified by a reasonable investigation.¹⁴ Subsection (a)(7) of section 541.060 thus imposes a duty on an insurer, above and beyond the duties established by the insurance policy itself, to conduct a reasonable investigation prior to denying a claim. It follows that USAA could have fully complied with the contract even if it failed to reasonably investigate Menchaca's claim.¹⁵

13 As noted, the *Page* Court held that “[t]here can be no liability under either Article 21.55 or Article 21.21 of the Insurance Code if there is no coverage under the policy.” *State Farm Lloyds v. Page*, 315 S.W.3d 525, 532 (Tex.2010). The Court noted that article 21.55 has since been repealed and recodified as sections 542.051 through .061 of the insurance code, while article 21.21 has been repealed and recodified as sections 551.001 through .454 and section 543.001 of the insurance code. *Id.* at 532 n. 3.

14 The policy merely states that “[i]n return for payment of premium and subject to all terms of this policy, we will provide the insurance described” and that “[w]e insure against risks of direct, physical loss to property described in Coverages A and B,” with certain exceptions not applicable here. “Coverages A and B” include “the dwelling on the residence premises ..., including structures attached to the dwelling” and “other structures on the residence premises set apart from the dwelling by clear space.”

15 As USAA acknowledges in its reply brief:
[T]he policy did not obligate USAA to perform an investigation. The requirement that an insurer conduct a reasonable investigation is imposed by the Insurance Code.... Thus, the jury's finding that a statutory failure to investigate was breached does not establish that USAA failed to comply with the terms of the policy.

*6 Second, even if USAA is correct that a claim based on an insurer's failure to conduct a reasonable investigation is barred when there is a finding of no coverage, the jury's answer to question number one does not definitively establish that there was no coverage. The parties do not dispute that Menchaca's policy generally covered damages to her property caused by Hurricane Ike. The disagreement here does not involve the extent of coverage afforded under the policy; rather, it is about the precise amount of damages inflicted by the storm on the covered property. Further, as the trial court noted when it declared its intention to disregard the finding of no breach, question number one did not define

breach of contract or otherwise instruct the jury on how to answer the question. It merely asked the jury whether USAA failed to comply with the policy.¹⁶ The jury could have found that USAA did not fail to comply with the policy for any one of several reasons: for example, it could have found that USAA was required under the policy only to pay for damages which it subjectively believed according to its own inspection were caused by the storm, and that USAA complied with that requirement because the damages identified by Hambrick and Glover amounted to less than the deductible. We do not presume to know the jury's thoughts when it considered question number one; we merely observe that its negative answer to that question is not equivalent, as USAA asserts on appeal, to a finding that “there is no coverage for the alleged damage to the roof, house, and fence.”

16 The trial court denied USAA's request for the following instructions to accompany question number one:

You are instructed that the policy requires a “direct, physical loss” to exist before any coverage applies. You are instructed the policy excludes wear and tear, latent defects, and vermin, rodents, and insects. You are instructed the insured[']s duties after a loss include: (a) give prompt notice of any claim, (b) protect the property from further damages, and (c) make reasonable and necessary repairs to protect the property.

USAA does not argue on appeal that the trial court erred by rejecting this instruction.

For the foregoing reasons, we find *Page* distinguishable and conclude that Menchaca's extra-contractual claims were not barred as a result of the jury's finding that USAA did not fail to comply with the policy. USAA's second issue is overruled.

B. Motion to Disregard Contract Verdict

By its first issue, USAA argues that the trial court erred in disregarding the jury's finding that it did not breach the policy.

1. Applicable Law and Standard of Review

After the jury returns its verdict, if there is no irreconcilable conflict in the jury's findings, the trial court is generally under a duty to render a judgment that conforms to that verdict. *Tex.R. Civ. P. 301*; see *Cantu v. Hidalgo Cnty.*, 398 S.W.3d 824, 827 (Tex.App.-Corpus Christi 2012, pet. denied). When determining whether jury findings irreconcilably conflict, we apply a de novo standard of review. *Indian Beach Prop. Owners' Ass'n v. Linden*, 222 S.W.3d 682, 695 (Tex.App.-Houston [1st Dist.] 2007, no pet.) (citing *Bender v. S. Pac.*

Transp. Co., 600 S.W.2d 257, 260 (Tex.1980)). The threshold question is whether the findings are about the same material fact. *Arvizu v. Estate of Puckett*, 364 S.W.3d 273, 276 (Tex.2012) (citing *Bender*, 600 S.W.2d at 260). When the findings do address the same material fact, they irreconcilably conflict only if “one of the answers would require a judgment in favor of the plaintiff and the other would require a judgment in favor of the defendant.” *Id.* (quoting *Little Rock Furniture Mfg. Co. v. Dunn*, 148 Tex. 197, 222 S.W.2d 985, 991 (Tex.1949)); see *Waltrip v. Bilbon Corp.*, 38 S.W.3d 873, 877 (Tex.App.-Beaumont 2001, pet. denied) (“A conflicting jury finding will not prevent the rendition of judgment and require a mistrial unless the findings, considered separately and taken as true, would compel the rendition of different judgments.”). We have a “duty to harmonize jury findings when possible” and we “must uphold jury findings if there is any reasonably possible basis upon which they may be reconciled.” *Arvizu*, 364 S.W.3d at 276.

*7 When there is no irreconcilable conflict, a trial court may nevertheless disregard a jury finding if (1) the finding is immaterial or (2) there is no evidence to support one or more of the jury findings on issues necessary to liability. See *Tex.R. Civ. P. 301*; *Spencer v. Eagle Star Ins. Co. of Am.*, 876 S.W.2d 154, 157 (Tex.1994); *Cantu*, 398 S.W.3d at 827. A finding is “immaterial” when the corresponding question either: (1) should not have been submitted; (2) calls for a finding beyond the province of the jury, such as a question of law; or (3) was properly submitted but has been rendered immaterial by other findings. See *Pipe Line Co., Inc. v. Tichacek*, 997 S.W.2d 166, 172 (Tex.1999); *Spencer*, 876 S.W.2d at 157; *Cantu*, 398 S.W.3d at 827.

2. Analysis

The jury's answers to questions one and two of the jury charge are not in irreconcilable conflict because, considered separately and taken as true, they do not compel the rendition of different judgments. See *Waltrip*, 38 S.W.3d at 877. As we have already held, the jury's conclusion that USAA did not fail to comply with the contract is not inherently inconsistent with its conclusion that USAA violated its statutory obligation to conduct a reasonable investigation. The trial court therefore could not have permissibly disregarded the answer to question number one on the basis that it irreconcilably conflicted with the answer to question number two.

However, the trial court's decision was justified on another basis. As noted, the jury was instructed in question number

three to assess the same damages—precisely defined as the difference between the amount USAA should have paid to Menchaca for storm damages and the amount it did pay—if it found *either* a breach of contract under question number one *or* a violation of the insurance code under question number two, or both. USAA did not object to this instruction, nor did it ask for an instruction directing the jury not to answer the insurance code or damages questions if it found no breach of contract.¹⁷ The jury's finding that USAA committed a violation of the insurance code rendered the no-breach-of-contract finding immaterial because the charge instructed the jury to award the same damages regardless of which theory of liability was adopted. And, we have already concluded that the finding of no breach did not preclude Menchaca's statutory claim that USAA failed to conduct a reasonable investigation. Because the jury's answer to question number one was rendered immaterial, the trial court did not err in disregarding it. See *Tichacek*, 997 S.W.2d at 172. USAA's first issue is overruled.

¹⁷ Accordingly, to the extent USAA's issue may be construed as a challenge to the jury charge, that issue has been waived. See *TEX.R. CIV. P. 272* (noting that objections to the jury charge must be “presented to the court in writing” or “dictated to the court reporter in the presence of the court and opposing counsel” and that “[a]ll objections not so presented shall be considered as waived”).

C. Evidence of Damages

By its third issue, USAA contends that there was no evidence to support the jury's damages award. We will sustain a “no evidence” or legal sufficiency challenge only if: (1) there is a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence establishes conclusively the opposite of the vital fact. *City of Keller*, 168 S.W.3d at 822. In evaluating legal sufficiency, we consider the evidence in the light most favorable to the verdict and indulge every reasonable inference that would support it. *Id.*

*8 USAA argues specifically that “[a]n insured is not entitled to recover extra-contractual damages unless the complained of actions or omissions cause injury independent of the injury resulting from a wrongful denial of policy benefits.” *United Servs. Auto. Ass'n v. Gordon*, 103 S.W.3d 436, 442 (Tex.App.-San Antonio 2002, no pet.) (citing

Parkans Int'l LLC. v. Zurich Ins. Co., 299 F.3d 514, 519 (5th Cir.2002); *Provident Am. Ins. Co. v. Castaneda*, 988 S.W.2d 189, 198–99 (Tex.1998); *MacIntire v. Armed Forces Benefit Ass'n*, 27 S.W.3d 85, 92 (Tex.App.-San Antonio 2000, no pet.).

An allegation that an insurer failed to perform a reasonable investigation is a type of bad faith claim. See *Twin City Fire Ins. Co. v. Davis*, 904 S.W.2d 663, 666 n. 3 (Tex.1995). A bad faith claim is not a claim for breach of contract; rather, it is based on a tort duty imposed by law. *Chitsey v. Nat'l Lloyds Ins. Co.*, 738 S.W.2d 641, 643 n. 1 (Tex.1987). However, in most circumstances, an insured may not prevail on a bad faith claim without first showing that the insurer breached the contract. *Liberty Nat'l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex.1996); *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 341 (Tex.1995); *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 17 (Tex.1994). USAA cites several cases where an insured's extra-contractual claims were barred as a matter of law because there was no evidence of damages other than wrongfully withheld policy benefits. See *Watson v. Allstate Tex. Lloyd's*, 224 F. Appx. 335, 342–43 (5th Cir.2007); *Parkans*, 299 F.3d at 519; *Mag-Dolphus v. Ohio Cas. Ins. Co.*, 906 F.Supp.2d 642, 649 (S.D.Tex.2012); *Castaneda*, 988 S.W.2d at 198–99; *Fire Ins. Exch. v. Sullivan*, 192 S.W.3d 99, 108 (Tex.App.-Houston [14th Dist.] 2006, pet. denied); *Lundstrom v. United Servs. Auto. Ass'n*, 192 S.W.3d 78, 96 (Tex.App.-Houston [14th Dist.] 2006, pet. denied); *Gordon*, 103 S.W.3d at 442; *MacIntire*, 27 S.W.3d at 92; *Toonen v. United Servs. Auto. Ass'n*, 935 S.W.2d 937, 941 (Tex.App.-San Antonio 1996, no writ).

We find these cases distinguishable. Most of them involve situations where the policy at issue was explicitly found not to cover the category of damages claimed by the plaintiff. See *Watson*, 224 F. Appx. at 342 (“[N]o genuine issue of material fact existed as to whether the [plaintiffs'] damage is excluded from coverage.”); *Parkans*, 299 F.3d at 519 (“finding no coverage under the primary policy”); *Sullivan*, 192 S.W.3d at 108 (finding that plaintiffs' extra-contractual claims regarding personal property damage were barred because the jury found no coverage for personal property damage under the policy); *Lundstrom*, 192 S.W.3d at 96 (concluding that plaintiff's extra-contractual claims regarding mold damage were barred because the policy “did not cover mold damage under the facts alleged here”).

In *Gordon*, USAA denied the plaintiffs' claim because it determined that seasonal weather changes, rather than

plumbing leaks, caused the complained-of foundation damage. *Gordon*, 103 S.W.3d at 437–38. The plaintiffs sued for breach of contract, violations of the insurance code, breach of the duty of good faith and fair dealing, and engaging in unconscionable conduct. *Id.* at 438. The jury found in favor of the plaintiffs on all of their claims, and it awarded identical amounts of damages under both the contractual and extra-contractual theories of recovery. *Id.* at 442. The Texas Supreme Court held that USAA “cannot, as a matter of law, be liable for the extra[-]contractual claims” because the plaintiffs failed to prove any damages apart from those “stemming from the denial of the claim.” *Id.* The Court therefore affirmed the award of contractual damages and reversed the award of extra-contractual damages. *Id.* *Gordon* is distinguishable from the instant case, however, because the jury in that case already found that USAA had breached the insurance policy and the judgment awarded damages for that breach. See *id.* In *Gordon*, an award of extra-contractual damages—where the only damages in evidence “stemm[ed] from the denial of the claim”—would have constituted an impermissible double recovery. See *id.*; see also *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 390 (Tex.2000) (“Under the one satisfaction rule, a plaintiff is entitled to only one recovery for any damages suffered.”). Such circumstances are not present in this case.

*9 In *Castañeda*, the Texas Supreme Court cited *Republic Insurance Co. v. Stoker*, 903 S.W.2d 338, 339 (Tex.1995), for the proposition “that failure to properly investigate a claim is not a basis for obtaining policy benefits.” *Castaneda*, 988 S.W.2d at 198. In *Stoker*, the supreme court considered “whether an insurer breaches its duty of good faith and fair dealing to its insured if it denies a claim for an invalid reason when there was at the time a valid reason for denial.” 903 S.W.2d at 339. There, the trial court rendered judgment on the plaintiffs' extra-contractual claims despite the fact that summary judgment had already been rendered in favor of the insurer on the issue of contractual liability under the policy. *Id.* The supreme court held that this was error in light of the “general rule” that “there can be no claim for bad faith when an insurer has promptly denied a claim that is in fact not covered” and because it was “established” that the policy at issue did not cover the claimed damages. *Id.* at 340–41. Here, on the other hand, it was not “established” that the policy provided no coverage for Menchaca's claim. Indeed, as noted, USAA did not dispute that the policy covered windstorm damage to Menchaca's property. The jury found USAA complied with the insurance policy, but as we have already discussed, this could have been for reasons other

than lack of coverage. We believe that this case, therefore, constitutes an exception to the “general rule” that breach of the policy must be established before policy benefits may be recovered. See *Akin*, 927 S.W.2d at 629; *Stoker*, 903 S.W.2d at 340–41.¹⁸

¹⁸ The *Stoker* Court distinguished *Deese v. State Farm*, 172 Ariz. 504, 838 P.2d 1265, 1266–67 (Ariz.1992), on the basis that the insurance company in *Deese* “did not deny coverage’”; rather, “[t]he dispute was whether portions of the medical bills were not reasonable and therefore not compensable.” *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 341 n. 1 (Tex.1995). We believe this case is similar to *Deese*. USAA did not deny that the policy covered damages caused to Menchaca's home by Hurricane Ike; rather, the dispute concerned the amount of loss suffered as a result of the storm. Therefore, the instant case is not subject to the “general rule” that policy benefits may not be awarded as damages for extra-contractual claims when there is no breach of contract finding.

In any event, USAA has not directed us to any cases, nor can we find any, involving a situation such as this one where (1) the insurer complied with the policy, but (2) nonetheless violated the insurance code, and (3) the insurer *would have been* contractually obligated to pay policy benefits had the insurer complied with the insurance code. Cf. *MacIntire*, 27 S.W.3d at 92 (breach of contract claim was properly disposed of by summary judgment because plaintiffs did not timely pay policy premium, and extra-contractual claims were based only on billing errors and denial of benefits under the policy). Under the unique circumstances presented in this case, USAA did not breach the policy but policy benefits are indeed the correct measure of damages caused by USAA's violation of the insurance code. See [TEX. INS.CODE ANN. § 541.152\(a\)\(1\)](#) (West, Westlaw through 2013 3d C.S.) (“A plaintiff who prevails in an action under this subchapter may obtain ... the amount of actual damages....”); *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 816 (Tex.1997) (“Actual damages are those damages recoverable under common law”); *Vail v. Tex. Farm Bureau Mut. Ins. Co.*, 754 S.W.2d 129, 136 (Tex.1988) (“[A]n insurer's unfair refusal to pay the insured's claim causes damages as a matter of law in at least the amount of the policy benefits wrongfully withheld.”). We therefore overrule USAA's third issue.

D. Penalty Interest

*10 USAA contends by its fourth issue that the award of penalty interest should be reversed because the jury found no

liability under the insurance policy. We agree. The applicable statute provides:

If an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy or the beneficiary making the claim under the policy, in addition to the amount of the claim, interest on the amount of the claim at the rate of 18 percent a year as damages, together with reasonable attorney's fees.

[TEX. INS.CODE ANN. § 542.060\(a\)](#). The jury in this case did not find USAA liable for “a claim under an insurance policy” since its verdict of damages was based on USAA's violation of the insurance code, not a breach of the policy. See *id.*

Even if we were to construe the verdict as holding USAA liable for “a claim under an insurance policy,” the jury did not find that USAA failed to comply with any provision of subchapter B of chapter 542 of the insurance code. See *id.* §§ 542.051–.061 (West, Westlaw through 2013 3d C.S.) (subchapter B of chapter 542, entitled “Prompt Payment of Claims”). Instead, the jury found USAA liable only for refusing to pay a claim without conducting a reasonable investigation with respect to the claim. See *id.* § 541.060(a)(7). Refusing to pay a claim without conducting a reasonable investigation is not one of the enumerated requirements of subchapter B of chapter 542. See *id.* §§ 542.051–.061. Accordingly, there was no basis for the trial court to have awarded penalty interest. We sustain this part of USAA's fourth issue and modify the judgment to delete the 18 percent penalty interest award.

E. Attorney's Fees

1. Basis for Award

USAA further argues by its fourth issue that the trial court's award of attorney's fees should be reversed because the jury found no breach of contract. We disagree. Under the insurance code, a “plaintiff who prevails in an action under [subchapter D of chapter 541] may obtain,” among other things, “reasonable and necessary attorney's fees.” *Id.* § 541.152(a)(1). Although the jury found that USAA did not fail to comply with the insurance policy, it did find that USAA violated the insurance code, and we have already determined

that the two findings do not irreconcilably conflict. Because Menchaca's suit was properly brought under subchapter D of insurance code chapter 541, *see id.* § 541.151 (establishing a private right of action for damages caused by, among other things, “an unfair or deceptive act or practice in the business of insurance”), and because she prevailed in her suit, she was entitled to recover reasonable attorney's fees. We overrule this part of USAA's fourth issue.

2. Segregation of Fees

By its fifth and final issue, USAA contends that the attorney's fees award was improper because Menchaca failed to segregate recoverable from unrecoverable fees. “[I]f any attorney's fees relate solely to a claim for which such fees are unrecoverable, a claimant must segregate recoverable from unrecoverable fees.” *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 313 (Tex.2006). An exception to this rule applies when recoverable and non-recoverable claims “are so intertwined that they need not be segregated.” *Id.*; *see A.G. Edwards & Sons, Inc. v. Beyer*, 235 S.W.3d 704, 710 (Tex.2007) (“It is only when legal services advance both recoverable and unrecoverable claims that the services are so intertwined that the associated fees need not be segregated.”).

*11 USAA asserts that Menchaca's contractual claim (as to which attorney's fees were not recoverable because Menchaca did not prevail thereon) and her insurance code claim (as to which fees were recoverable as set forth above) were not “so intertwined” such that segregation was unnecessary. USAA argues that Menchaca's contract claim was “based on whether the damage to her home was caused by Hurricane Ike and was covered by policy,” whereas her insurance code claim was “based on whether USAA conducted a reasonable investigation of her claim.” It cites *United States Insurance Fire Co. v. Millard*, a 1993 case in which the First District Court of Appeals held that the plaintiffs' contractual and extra-contractual insurance claims were “separate and distinct” and therefore properly severed from each other. 847 S.W.2d 668, 672 (Tex.App.-Houston [1st Dist.] 1993, orig. proceeding) (stating generally that “[a] breach of an insurance contract claim is separate and distinct from bad faith, Insurance Code or DTPA causes of action”).

We disagree that Menchaca was required to segregate fees attributable to her contract claim from fees attributable to her insurance code claim. The two claims relied upon the same underlying factual allegations and both sought recovery of policy benefits as damages. Because the “legal services advance[d] both recoverable and unrecoverable claims,”

Beyer, 235 S.W.3d at 710, we conclude that the claims were “so intertwined” such that segregation was not feasible or necessary. *See Tony Gullo Motors*, 212 S.W.3d at 313. USAA's fifth issue is overruled.

3. Appellate Fees

By one issue on cross-appeal, Menchaca argues that the award of appellate fees was improper because it was less than the amount that her trial attorney, Randal Cashiola, testified was reasonable. Cashiola testified that a reasonable amount of conditional appellate attorney's fees would be \$50,000 for proceedings in the court of appeals and \$25,000 for proceedings in the Texas Supreme Court. As noted, the jury awarded no appellate fees, but the trial court granted Menchaca's motion to disregard that finding. The final judgment awarded fees of \$5,000 and \$10,000 for proceedings in the court of appeals and in the supreme court, respectively.

“[W]here trial counsel's testimony concerning attorney's fees is clear, positive and direct, and uncontroverted, it is taken as true as a matter of law” and “in such instances, appellate courts will reverse a denial or minimization of attorney's fees and render judgment for attorney's fees in the amount proved.” *McMillin v. State Farm Loyds*, 180 S.W.3d 183, 210 (Tex.App.-Austin 2005, pet. denied) (citing *Ragsdale v. Progressive Voters League*, 801 S.W.2d 880, 882 (Tex.1990) (“[W]here the testimony of an interested witness is not contradicted by any other witness, or attendant circumstances, and the same is clear, direct and positive, and free from contradiction, inaccuracies, and circumstances tending to cast suspicion thereon, it is taken as true, as a matter of law.”)). “Ordinarily, the allowance of attorney's fees rests with the sound discretion of the trial court and will not be reversed without a showing of abuse of that discretion.” *Ragsdale*, 801 S.W.2d at 881.

*12 Menchaca asserts that the trial court was compelled to accept Cashiola's testimony regarding the reasonable amount of appellate fees because such testimony was uncontroverted by USAA. We disagree. Even if evidence is uncontroverted, “if it is unreasonable, incredible, or its belief is questionable, then such evidence would only raise a fact issue to be determined by the trier of fact.” *Id.* at 882. Here, Menchaca's attorney testified that he derived his estimate of reasonable fees based upon an hourly rate of \$500. However, he conceded that a State Bar of Texas survey showed that the median hourly rate for attorneys in southeast Texas is \$194,

less than half of the billed rate.¹⁹ From this testimony, the trial court could have concluded that a reasonable amount of appellate fees was less than the amount that Cashiola testified was reasonable. *See Id.* (noting that, even if fee testimony is uncontroverted, “the trial judge could find some of the claimed fees to be unreasonable, unwarranted, or some other circumstance which would make an award of the uncontroverted claim wrong”); *see also Clinica Santa Maria v. Martinez*, No. 13–09–573–CV, 2010 WL 2543943, at *4 (Tex.App.-Corpus Christi June 24, 2010, pet. denied) (mem.op.) (“[E]ven if there is no direct testimony to contradict the amount testified to, a trial court still has the discretion to award a lesser amount if it has any reason to determine that the award was unreasonable or unwarranted.”).

We conclude that the trial court did not abuse its discretion in this regard. Menchaca's issue on cross-appeal is overruled.

¹⁹ USAA's counsel sought to admit a copy of the State Bar survey into evidence, but Menchaca objected and the trial court sustained the objection. There was no objection made, however, to Cashiola's testimony regarding the State Bar survey.

III. CONCLUSION

We affirm the trial court's judgment as modified herein. *See* [TEX.R.APP. P. 43.2\(b\)](#).

APPENDIX 4



THE THIRTEENTH COURT OF APPEALS

13-13-00046-CV

USAA TEXAS LLOYD'S COMPANY
v.
GAIL MENCHACA

On Appeal from the
9th District Court of Montgomery County, Texas
Trial Cause No. 09-05-04702-CV

JUDGMENT

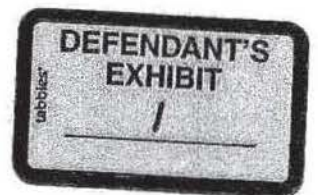
THE THIRTEENTH COURT OF APPEALS, having considered this cause on appeal, concludes that the judgment of the trial court should be affirmed. The Court orders the judgment of the trial court AFFIRMED AS MODIFIED. Costs of the appeal are adjudged against appellant.

We further order this decision certified below for observance.

July 31, 2014

APPENDIX 5

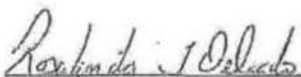
CERTIFIED HOMEOWNER POLICY



MENCHACA/USAA
POLICY 0001

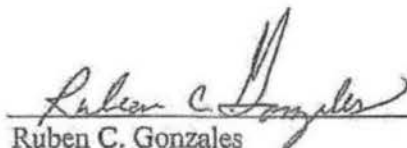
STATE OF TEXAS

Before me, the undersigned notary public for the State of Texas, on this day personally appeared Rosalinda T Delgado, Administrative Support Manager and custodian of records of USAA Texas Lloyd's Company, and after being by me duly sworn and upon her oath says that an exact duplicate of the USAA Texas Lloyd's Company, 00225 16 56 90A, including any applicable endorsements and forms, issued to Gail F Menchaca, effective September 13, 2008, has been prepared under her direction and is attached hereto.

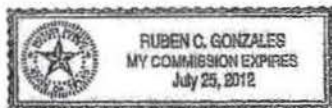


Rosalinda T Delgado,
Administrative Support Manager

Subscribed and sworn to before me by said Rosalinda T Delgado, Administrative Support Manager, this 2nd day of June, 2009 at San Antonio, Texas, to certify which witness my hand and seal at office.



Ruben C. Gonzales
Notary Public
State of Texas
My commission expires on July 25, 2012



MENCHACA/USAA
POLICY 0002



HOMEOWNERS POLICY PACKET

021344

EFFECTIVE: 10-29-07 TO: 10-29-08

GAIL F MENCHACA
30738 VICTORIA ESTATES DR
SPRING TX 77386-2702

LLYD 00225 16 56 90A

IMPORTANT MESSAGES

Refer to your Declarations Page and endorsements to verify that coverages, limits, deductibles and other policy details are correct and meet your insurance needs. Required information forms are also enclosed for your review.

- 1) USAA considers many factors when determining your premium. Maintaining your property to reduce the probability of loss is one of the most important steps you can take toward reducing premium increases. A history of claim activity will affect your policy premium.
- 2) Go to usaa.com to view policy coverages and home features.
- 3) Your policy does NOT cover loss due to flood from any source. For information about obtaining flood coverage from the National Flood Insurance Program (NFIP), call USAA at (800) 531-8444, or contact the NFIP directly.

If you already have a flood policy, you should review it to make sure you have the appropriate coverage and limits. No automatic increases or adjustments are applied to your policy. Coverage for loss of household contents due to flood may be available at an additional cost. If you have questions, please call a member service representative at the phone number above.

This is not a bill. Any premium charge or return for this policy will be reflected on your next regular monthly statement.

To receive this document and others electronically or view your policy summary online, go to usaa.com.

For U.S. Calls: Policy Service (800) 531-8111. Claims (800) 531-8222.

HOCS1

49709-0406

MENCHACA/USAA
POLICY 0003

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IMPORTANT NOTICE

To obtain information or make a complaint:

You may call USAA Texas Lloyd's Company's toll-free telephone number for information or to make a complaint at

(800) 531-8111

In San Antonio call 488-8111

You may also write to USAA Texas Lloyd's Company at:

9800 Fredericksburg Road
San Antonio, Texas 78288

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

(800) 252-3439

You may write the Texas Department of Insurance

P.O. Box 149104
Austin, Texas 78714-9104
FAX # (512) 475-1771

web: <http://www.tdi.state.tx.us>

E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact USAA Texas Lloyd's Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

250LLD(01) 2-07

AVISO IMPORTANTE

Para obtener información o para someter una queja:

Usted puede llamar al número de teléfono gratis de USAA Texas Lloyd's Company para información o para someter una queja al

(800) 531-8111

En San Antonio llame a 488-8111

Usted también puede escribir a USAA Texas Lloyd's Company:

9800 Fredericksburg Road
San Antonio, Texas 78288

Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de compañías, coberturas, derechos o quejas al

(800) 252-3439

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
Austin, Texas 78714-9104
FAX # (512) 475-1771

web: <http://www.tdi.state.tx.us>

E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con USAA Texas Lloyd's Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento [TDI].

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para propósito de información y no se convierte en parte o condición del documento adjunto.

65119-0207



USAA TEXAS LLOYD'S COMPANY

9800 Fredericksburg Road - San Antonio, Texas 78288
HOMEOWNERS POLICY DECLARATIONS

Named Insured and Residence Premises

Policy Number

GAIL F MENCHACA

LLYD 00225 16 56 90A

30738 VICTORIA ESTATES DR
SPRING, MONTGOMERY, TX 77386-2702

POLICY PERIOD From: 10/29/07 To: 10/29/08
(12:01 AM standard time at location of the residence premises)

COVERAGES AND LIMITS OF LIABILITY		
SECTION I	A. Dwelling	\$202,000
	C. Personal Property	\$151,500
	D. Loss of Use (UP TO 12 MONTHS)	\$40,400
SECTION II	E. Personal Liability - Each Occurrence	\$300,000
	F. Medical Payments to Others - Each Person	\$5,000

Your premium has already been reduced by the following:		
	FIRE/BURGLARY CREDIT	\$16.95 CR
	NEW HOME DISCOUNT	\$245.83 CR
	BASIC PREMIUM	\$606.90
OTHER COVERAGES AND ENDORSEMENTS		
Form and Endorsements are printed on the following page.		\$153.29
DEDUCTIBLES (SECTION I ONLY)		
We cover only that part of the loss over the deductible stated.		
	WIND AND HAIL	\$2,020 (1%)
	ALL OTHER PERILS	\$2,020 (1%)
TOTAL POLICY PREMIUM		\$760.19
THIS IS NOT A BILL. STATEMENT TO FOLLOW.		

FIRST MORTGAGEE:
BANK OF AMERICA, 173
ITS SUCCESSORS AND/OR ASSIGNS
P. O. BOX 1675
CORAOPOLIS, PA, 15108

LOAN NR 3301020933

In Witness Whereof, this policy is signed on 10/25/07

REFER TO YOUR POLICY FOR OTHER COVERAGES, LIMITS AND EXCLUSIONS.

HO-D1 (04-93)

MENCHACA/USAA
POLICY 0006



USAA TEXAS LLOYD'S COMPANY
HOMEOWNERS POLICY DECLARATIONS

Policy Number: LLYD 00225 16 56 90A Policy Term: 10/29/07 10/29/08
Inception Expiration

SPECIFICALLY LISTED BELOW ARE THE DECLARATIONS AND PREMIUMS FOR ENDORSEMENTS MADE A PART OF THIS POLICY AT THE TIME OF ISSUE. THE ENDORSEMENTS ARE ATTACHED STATING TERMS AND CONDITIONS.

QR3TXLLD	(01-02) QUICK REFERENCE-SPECIAL FORM	
HO-3RTX	(02-03) HOMEOWNERS SPECIAL FORM	
ESA	(02-05) SPOUSE ACCESS ENDORSEMENT	
HO-FLDA	(01-07) HOME FLOOD AMENDATORY ENDR	
HO-TX	(10-03) TEXAS SPECIAL PROVISIONS	
HO-17	(07-00) ADJUSTED BUILDING COST	
HO-216	(04-93) FIRE/BURGLARY PROTECTION CREDIT	
HO-141TX	(01-02) WATER DAMAGE COVERAGE	\$37.00
HO-208TX	(01-02) WATER BACKUP OR SUMP PUMP OVERFLOW	\$40.00
HO-728TX	(01-03) REPLACEMENT COST COVERAGE	\$76.29

HO-D2 (04-93)

10/25/07

MENCHACA/USAA
POLICY 0007



USAA
9800 Fredericksburg Road • San Antonio, Texas 78228

LLYD 00225 16 56

PAGE 6
90A

SPECIAL FORM - HOMEOWNERS POLICY

****READ YOUR POLICY CAREFULLY****

This policy is a legal contract between you, the policyholder, and us, the insurer. And like other contracts, it contains certain duties and responsibilities of both parties to the contract. This contract consists of the Declarations page, the policy, and any applicable endorsements.

This cover sheet provides only a brief outline of some of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company.

Your policy provides the coverages and amounts of insurance shown in the Declarations with a premium.

IT IS THEREFORE IMPORTANT THAT YOU READ YOUR POLICY.

QUICK REFERENCE

AGREEMENT	Page 1	PERILS INSURED AGAINST	8
DEFINITIONS	1	Dwelling and Other Structures	
SECTION I		Personal Property	
PROPERTY COVERAGES	2	EXCLUSIONS	11
Dwelling		CONDITIONS	12
Other Structures		SECTION II	
Personal Property		LIABILITY COVERAGES	18
Special Limits of Liability		Personal Liability	
Property Not Covered		Medical Payments to Others	
Loss of Use		EXCLUSIONS	18
Additional Coverages		ADDITIONAL COVERAGES	21
Debris Removal		Claims Expenses	
Reasonable Repairs		First Aid Expenses	
Trees, Shrubs, and Other Plants		Damage to Property of Others	
Fire Department Service Charge		Loss Assessment	
Property Removed		CONDITIONS	23
Credit Card		SECTIONS I and II	
Loss Assessment		CONDITIONS	24
Collapse			
Lock Replacement			
Refrigerated Products			
Land			
Glass			
Landlord's Furnishings			
Building Ordinance or Law			
Temporary Living Expense			

QR3TXLLD (01-02)

MENCHACA/USAA
POLICY 0008

Homeowners 3RTX
Special Form
(02-03)
HO-93 Program

AGREEMENT

In return for payment of premium and subject to all terms of this policy, we will provide the insurance described.

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse when a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance. Certain words and phrases are defined and are printed in boldface when used.

1. **"bodily injury"** means bodily harm, sickness or disease, including required care, loss of services and death that results.
2. **"business"** includes trade, profession or occupation.
3. **"business day"** means a day other than Saturday, Sunday or holiday recognized by the State of Texas.
4. **"insured"** means you and residents of your household who are:
 - a. your relatives; or
 - b. other persons under the age of 21 and in the care of any person named above.
5. **"insured location"** means:
 - a. the residence premises;
 - b. the part of other premises, other structures and grounds used by you as a residence;
 - c. any premises used by you in connection with a premises in 5a or 5b above;
 - d. any part of a premises:
 - (1) not owned by an Insured; and
 - (2) where an Insured is temporarily residing;
 - e. vacant land, other than farm land, owned by or rented to an Insured;
 - f. land owned by or rented to an Insured on which a one or two family dwelling is being built as a residence for an Insured;
 - g. individual or family cemetery plots or burial vaults of an Insured; or
 - h. any part of a premises occasionally rented to an insured for other than business use.
6. **"occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:
 - a. bodily injury; or
 - b. property damage.

Under SECTION II, "Insured" also means:

- c. with respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in 4a or 4b above. A person or organization using or having custody of these animals or watercraft in the course of any business or without consent of the owner is not an insured;
- d. with respect to any vehicle or conveyance to which this policy applies:
 - (1) persons while engaged in your employ or that of any person included in 4a or 4b above; or
 - (2) other persons using the vehicle on an insured location with your consent.

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- 7. "property damage" means physical damage or destruction of tangible property, including loss of use of this property.
- 8. "residence employee" means:
 - a. an employee of an Insured whose duties are related to the maintenance or use of the residence premises, including household or domestic services; or
 - b. one who performs similar duties elsewhere not related to the business of an Insured.
- 9. "residence premises" means:
 - a. the one family dwelling, other structures, and grounds; or
 - b. that part of any other building; where you reside and which is shown as the "residence premises" in the Declarations.

"Residence premises" also means a two family dwelling where you reside in at least one of the family units and which is shown as the "residence premises" in the Declarations.

SECTION I - PROPERTY COVERAGES

COVERAGE A - Dwelling

We cover:

- 1. the dwelling on the residence premises shown in the Declarations, including structures attached to the dwelling;
- 2. materials and supplies located on or next to the residence premises used to construct, alter or repair the dwelling or other structures on the residence premises; and
- 3. permanently installed carpeting.

Except as specifically provided in SECTION I - ADDITIONAL COVERAGES, Land, we do not cover land, including land on which the dwelling is located.

COVERAGE B - Other Structures

We cover other structures on the residence premises set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

Except as specifically provided in SECTION I - ADDITIONAL COVERAGES, Land, we do not cover land, including land on which the other structures are located.

We do not cover other structures:

- 1. used in whole or in part for business; or

- 2. rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage.

The limit of liability for this coverage will not be more than 10% of the limit of liability that applies to Coverage A. Use of this coverage does not reduce the Coverage A limit of liability.

COVERAGE C - Personal Property

We cover personal property owned or used by an Insured while it is anywhere in the world. At your request, we will cover personal property owned by:

- 1. others while the property is on the part of the residence premises occupied by an Insured;
- 2. a guest or a residence employee, while the property is in any residence occupied by an Insured.

Our limit of liability for personal property usually located at an Insured's residence, other than the residence premises, is 10% of the limit of liability for Coverage C, or \$1,000, whichever is greater.

Personal property in a newly acquired principal residence is not subject to this limitation for the 30 days from the time you begin to move the property there.

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Special Limits of Liability. These limits do not increase the Coverage C limit of liability. The special limit for each numbered category below is the total limit for each loss for all property in that category.

1. \$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins and medals.
2. \$1,000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This limit includes the cost to research, replace or restore the information from the lost or damaged material. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.
3. \$1,000 on watercraft, including their trailers, furnishings, equipment and outboard motors.
4. \$1,000 on trailers not used with watercraft.
5. \$1,000 for loss by theft of jewelry, watches, precious and semi-precious stones, fur garments, including any garment containing fur which represents its principal value.
6. \$2,000 for loss by theft of firearms.
7. \$2,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.
8. (a) \$2,500 for business property at your residence.
(b) \$250 for business property away from your residence.
9. \$3,000 on motorized golf carts and their equipment and accessories. But if, at the time of loss, there is an automobile policy covering physical loss to golf carts, then this policy does not apply to those golf carts and their equipment and accessories.

Property Not Covered. We do not cover:

1. articles separately described and specifically insured in this or other insurance;
2. animals, birds or fish;
3. motor vehicles or all other motorized land conveyances. This includes:
 - a. equipment and accessories; or
 - b. any device or instrument for the transmitting, recording, receiving or reproduction of sound or pictures which is operated by power from the electrical system of motor vehicles or all other motorized land conveyances, including:
 - (1) accessories or antennas; or
 - (2) tapes, wires, records, discs or other media for use with any such device or instrument.while in or upon the vehicle or conveyance.

We do cover vehicles or conveyances not subject to motor vehicle registration which are:

- a. used to service an Insured's residence; or
- b. designed for assisting the handicapped.

We also cover motorized golf carts and their equipment and accessories, subject to the provisions under Special Limits of Liability.

4. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;
5. property of roomers, boarders, tenants, or other residents, not related to an Insured;
6. property in an apartment regularly rented or held for rental to others by an Insured, except as provided in ADDITIONAL COVERAGES, Landlord's Furnishings;
7. property rented or held for rental to others off the residence premises;

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- B. business data, including such data stored in:
- books of account, drawings or other paper records; or
 - electronic data processing tapes, wires, records, discs or other software media.

However, we do cover the cost of blank recording or storage media, and of pre-recorded computer programs available on the retail market.

9. credit cards or fund transfer cards except as provided in ADDITIONAL COVERAGES, Credit Card, Fund Transfer Card, Forgery, Counterfeit Money and Identity Fraud Expense.

COVERAGE D - Loss Of Use

The limit of liability for Coverage D is the total limit for all the coverages that follow.

1. **Additional Living Expense.** If a loss covered under Section - I makes that part of the residence premises where you reside not fit to live in, we cover the necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere, in either event, not to exceed 12 months.

2. **Fair Rental Value.** If a loss covered under Section - I makes that part of the residence premises rented to others or held for rental by you not fit to live in, we cover the fair rental value of that part of the residence premises rented to others or held for rental by you less any expenses that do not continue while the premises is not fit to live in.

Payment will be for the shortest time required to repair or replace that part of the premises rented or held for rental, but not to exceed 12 months.

3. **Prohibited Use.** If a civil authority prohibits you from use of the residence premises as a result of direct damage to neighboring premises by a loss covered under Section - I, we cover the Additional Living Expense or Fair Rental Value loss as provided under 1 and 2 above for not more than two weeks.

The periods of time under 1, 2 and 3 above are not limited by expiration of this policy.

We do not cover loss or expense due to cancellation of a lease or agreement.

No deductible applies to this coverage.

ADDITIONAL COVERAGES

1. **Debris Removal.**

- a. We will pay your reasonable expense for the removal of:

- debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or
- ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. When the amount payable for the actual damage to the property plus the expense for debris removal exceeds the limit of liability for the damaged property, an additional 5% of that limit of liability will be available to cover debris removal expense.

- b. We will also pay your reasonable expense, up to \$500 in the aggregate, for the removal from the residence premises of:

- your tree(s) felled by the peril of Windstorm or hail;
- your tree(s) felled by the peril of Weight of ice, snow or sleet; or
- a neighbor's tree(s) felled by a Peril Insured Against under Coverage C:

provided the tree(s) damages a covered structure.

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2. **Reasonable Repairs.** In the event that covered property is damaged by an applicable Peril Insured Against, we will pay the reasonable cost incurred by you for necessary measures taken solely to protect against further damage. If the measures taken involve repair to other damaged property, we will pay for those measures only if that property is covered under this policy and the damage to that property is caused by an applicable Peril Insured Against.

This coverage:

- a. does not increase the limit of liability that applies to the covered property;
- b. does not relieve you of your duties, in case of a loss to covered property, as set forth in SECTION I - CONDITIONS 3.d.

3. **Trees, Shrubs and Other Plants.** We cover trees, shrubs, plants or lawns, on the residence premises, for loss caused by the following Perils Insured Against: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles not owned or operated by a resident of the residence premises, Vandalism or malicious mischief or Theft.

We will pay up to 5% of the limit of liability that applies to the dwelling for all trees, shrubs, plants or lawns. No more than \$500 of this limit will be available for any one tree, shrub or plant. We do not cover property grown for business purposes.

This coverage is additional insurance.

4. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

5. **Property Removed.** We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed. This coverage does not increase the limit of liability that applies to the property being removed.

6. **Credit Card, Fund Transfer Card, Forgery, Counterfeit Money and Identity Fraud Expense.**

We will pay up to \$5,000 in the aggregate for all loss and defense costs resulting from:

- a. the legal obligation of any Insured to pay because of the theft or unauthorized use of credit cards issued to or registered in any Insured's name;
- b. loss resulting from theft or unauthorized use of electronic fund transfer cards or access devices used for deposit, withdrawal or transfer of funds, issued to or registered in any Insured's name;
- c. loss to any Insured caused by forgery or alteration of any check or negotiable instrument;
- d. loss to any Insured through acceptance in good faith of counterfeit United States or Canadian paper currency; or
- e. expense incurred by any Insured as the direct result of any one identity fraud.

For the purposes of this coverage, a series of acts committed by any one person or in which any one person is concerned or implicated is considered to be one loss, even if a series of acts continues into a subsequent policy period.

We will provide defense, other than that provided by Identity Fraud Expense coverage as follows:

- a. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to defend a claim or suit ends when the amount we pay or tender for the loss equals our limit of liability.
- b. If a suit is brought against any Insured for liability under the Credit Card or Fund Transfer Card coverage, we will provide a defense at our expense by counsel of our choice.

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- c. We have the option to defend at our expense any Insured or any Insured's bank against any suit for the enforcement of payment under the Forgery coverage.

With respect to the provisions of this coverage only, the following definitions are added:

"Expenses" means:

- a. costs for notarizing fraud affidavits or similar documents for financial institutions or similar credit grantors or credit agencies that have required that such affidavits be notarized;
- b. costs for certified mail to law enforcement agencies, credit agencies, financial institutions or similar credit grantors;
- c. lost wages as a result of time taken off from work to meet with, or talk to, law enforcement agencies, credit agencies merchants, and/or legal counsel, or to complete fraud affidavits, not to exceed \$250 per day;
- d. loan application fees for re-applying for a loan or loans when original application is rejected solely because the lender received incorrect credit information resulting from Identity fraud;
- e. reasonable attorney fees incurred, with our prior consent, for:
 - (1) defense of lawsuits brought against any insured by merchants or their collection agencies; and
 - (2) the removal of any criminal or civil judgments wrongly entered against any Insured;
- f. charges incurred for long distance telephone calls to merchants, law enforcement agencies, financial institutions or similar credit grantors or credit agencies to report or discuss an actual Identity fraud;
- g. research fees charged by merchants, financial institutions or similar credit grantors, or credit agencies resulting from Identity fraud.

"Identity fraud" means the act of knowingly transferring or using, without lawful authority, a means of identification of any Insured with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of federal law or a felony under any applicable state or local law.

The following additional exclusions apply to this coverage:

- a. We do not cover forgery, theft or use of a credit card, electronic fund transfer card or access device:
 - (1) by a resident of your household;
 - (2) by a person who has been entrusted with the card(s) or device(s); or
 - (3) if any Insured has not complied with all terms and conditions under which the cards or devices are issued.
 - b. We do not cover loss arising out of business pursuits, dishonesty, fraud, or criminal activity of any Insured.
- This coverage is additional insurance. A \$100 deductible applies to Identity Fraud Expense coverage. No deductible applies to the Credit Card, Fund Transfer Card, Forgery and Counterfeit Money coverage.
7. Loss Assessment. We will pay up to \$1,000 for your share of loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of direct loss to the property, owned by all members collectively, caused by a Peril Insured Against under Coverage A - Dwelling, subject to all provisions of the policy. Assessments made as a result of damage caused by earthquake or land shock waves or tremors before, during or after a volcanic eruption are not covered.

This coverage applies only to loss assessments charged against you as owner or tenant of the residence premises.

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We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

The limit of \$1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments.

Condition 1. Policy Period, under SECTIONS I and II - CONDITIONS, does not apply to Loss Assessment.

8. Collapse. For an entire building or any part of a building, collapse means:

- a. sudden falling or caving in;
- b. a sudden breaking apart or deformation such that the building or part of a building is in imminent peril of falling or caving in and is not fit for its intended use.

Damage consisting of settling, cracking, shrinking, bulging or expansion is not included unless it occurs as a direct result of collapse.

We insure for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Perils Insured Against in Coverage C - Personal Property. These perils apply to covered buildings and personal property for loss insured by this additional coverage;
- b. decay that is hidden from view, meaning damage that is unknown prior to collapse or that does not result from a failure to reasonably maintain the property;
- c. insect or vermin damage that is hidden from view, meaning damage that is unknown prior to collapse or that does not result from a failure to reasonably maintain the property;
- d. weight of contents, equipment, animals or people;
- e. weight of rain which collects on a roof; or

- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b, c, d, e and f unless the loss is a direct result of the collapse of a building or any part of a building.

This coverage does not increase the limit of liability that applies to the damaged covered property.

9. Lock Replacement. When the dwelling door keys are stolen in a covered theft loss, we will pay the cost to:

- a. change the combination in the lock cylinder of the door locks as needed; or
- b. change the lock hardware of the doors as needed.

The limit of liability for Lock Replacement is \$250. No deductible applies to this coverage.

10. Refrigerated Products. We will pay you up to \$500 for loss to the contents of a freezer or a refrigerator located on the residence premises, as a consequence of power failure or mechanical breakdown.

This coverage does not increase the Coverage C limit of liability. No deductible applies to this coverage. The Power Failure exclusion under SECTION I - EXCLUSIONS, does not apply to Refrigerated Products.

11. Lend. If a Peril Insured Against damages the building insured under Coverages A or B and the same Peril Insured Against causes the land necessary to support the building insured under Coverages A or B to become unstable, we will pay up to \$10,000 for the cost required to replace, rebuild, stabilize or otherwise restore such land.

This is an additional amount of insurance.

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12. Glass or Safety Glazing Material.

We cover:

- a. the breakage of glass or safety glazing material by a Peril Insured Against which is part of a covered building, storm door or storm window; and
- b. damage to covered property by glass or safety glazing material which is part of a building, storm door or storm window.

This coverage does not include loss on the residence premises if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

This coverage does not increase the limit of liability that applies to the damaged property.

- 13. Landlord's Furnishings.** We will pay up to \$2500 for your appliances, your carpeting and other household furnishings, located in an apartment on the residence premises regularly rented or held for rental to others by an Insured, for loss caused by the Perils Insured Against in Coverage C - Personal Property, except Theft.

The \$2500 limit is the most we will pay in any one loss regardless of the number of appliances, carpeting or other household furnishing involved in the loss.

- 14. Building Ordinance or Law.** For loss caused by a Peril Insured Against to buildings under Coverage A or B, we will pay the increased costs which are required and you actually incur to rebuild, repair or demolish this property due to compliance with any ordinance or law in effect at the time of the loss.

The limit of liability for this coverage will not be more than 5% of the Coverage A limit of liability.

If the insured property is located in an area which is eligible for coverage through the Texas Windstorm Insurance Association, the coverage described above, also applies to the increased cost you incur due to the repair, replacement or demolition required for the dwelling to comply with the building specifications contained in the Texas Windstorm Insurance Association's plan of operation.

This coverage is additional insurance.

- 15. Temporary Living Expense.** We will pay up to \$2,000 for necessary increase in costs which you incur to maintain your normal standard of living when the residence premises is uninhabitable due to a loss caused by earthquake, volcanic eruption, landslide, or if a civil authority prohibits your use of the residence premises because an earthquake, volcanic eruption or landslide has occurred.

This coverage is additional insurance. No deductible applies to this coverage.

SECTION I - PERILS INSURED AGAINST

**COVERAGE A - DWELLING and
COVERAGE B - OTHER STRUCTURES**

We insure against risks of direct, physical loss to property described in Coverages A and B; however, we do not insure loss:

- 1. involving collapse, other than as provided in ADDITIONAL COVERAGES, Collapse.
- 2. caused by:

- a. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied or being constructed and then, only if you have failed to:

- (1) maintain heat in the building; or

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- (2) shut off the water supply and drain the system and appliances of water;
 - b. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to:
 - (1) fence, pavement, patio or swimming pool;
 - (2) foundation, retaining wall or bulkhead; or
 - (3) pier, wharf or dock;
 - c. theft in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;
 - d. vandalism and malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;
 - e. constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance;
3. caused by or consisting of:
- a. wear and tear or marring;
 - b. inherent vice, latent defect, mechanical breakdown;
 - c. smog, rust, or other corrosion;
 - d. smoke from agricultural smudging or industrial operations;
 - e. discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against under Coverage C of this policy.
- Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;

- f. birds, vermin, rodents, insects; or
- g. animals owned or kept by an Insured.

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

4. excluded under SECTION I - EXCLUSIONS.

Under Items 2 and 3, any ensuing loss to property described in Coverage A and B not excluded or excepted in this policy is covered.

COVERAGE C - PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in SECTION I - EXCLUSIONS.

- 1. Fire or lightning.
- 2. Windstorm or hail.

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

This peril includes loss to watercraft and their trailers, furnishings, equipment and outboard motors, only while inside a fully enclosed building.

- 3. Explosion.
- 4. Riot or civil commotion.
- 5. Aircraft, including self-propelled missiles and spacecraft.
- 6. Vehicles.

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7. **Smoke**, meaning sudden and accidental damage from smoke.

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. **Vandalism or malicious mischief.**

9. **Theft**, including attempted theft and loss of property from a known place when it is likely that the property has been stolen.

This peril does not include loss caused by theft:

- a. committed by an Insured;
- b. in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied; or
- c. from that part of a residence premises rented by an Insured to other than an Insured.

This peril does not include loss caused by theft that occurs off the residence premises of:

- a. property while at any other residence owned by, rented to, or occupied by an Insured, except while an Insured is temporarily residing there. Property of a student who is an Insured is covered while at a residence away from home if the student has been there at any time during the 45 days immediately before the loss;
- b. watercraft, including their furnishings, equipment and outboard motors; or
- c. trailers and campers.

10. **Falling objects.**

This peril does not include loss to property contained in a building unless the roof or an outside wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. **Weight of ice, snow or sleet** which causes damage to property contained in a building.

12. **Accidental discharge or overflow of water or steam** from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance. In this peril, a plumbing system does not include a sump pump, sump well or similar device designed to drain water from the foundation area.

This peril does not include loss:

- a. to the system or appliance from which the water or steam escaped;
- b. caused by or resulting from freezing except as provided in the peril of Freezing below; or
- c. on the residence premises caused by accidental discharge or overflow which occurs off the residence premises.

13. **Sudden and accidental tearing apart, cracking, burning or bulging** of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

This peril does not include loss caused by or resulting from freezing.

14. **Freezing** of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance.

This peril does not include loss on the residence premises while the dwelling is unoccupied, if you have failed to:

- a. maintain heat in the building; or
- b. shut off the water supply and drain the system and appliances of water.

15. **Sudden and accidental damage** from artificially generated electrical current.

16. **Volcanic eruption** other than loss caused by earthquake, land shock waves or tremors.

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SECTION I - EXCLUSIONS

1. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

a. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, other than as provided in ADDITIONAL COVERAGES, Building Ordinance or Law.

b. **Earth Movement**, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; landslide; mine subsidence; mudflow; earth sinking, rising or shifting; unless direct loss by:

- (1) fire;
- (2) explosion; or
- (3) breakage of glass or safety glazing material which is part of a building, storm door or storm window;

ensues and then we will pay only for the ensuing loss.

This exclusion does not apply to loss by theft.

c. **Water Damage**, meaning:

- (1) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- (2) water which backs up through sewers or drains or which overflows from a sump pump, sump well or similar device designed to drain water from the foundation area; or
- (3) water below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

Direct loss by fire, explosion or theft resulting from water damage is covered.

d. **Power Failure**, meaning the failure of power or other utility service if the failure takes place off the residence premises, except as provided in ADDITIONAL COVERAGES, Refrigerated Products. But, if a Peril Insured Against ensues on the residence premises, we will pay only for that ensuing loss.

e. **Neglect**, meaning neglect of the insured to use all reasonable means to save and preserve property at and after the time of a loss.

f. **War**, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

g. **Nuclear Hazard**, meaning any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against in Section I. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

h. **Intentional Loss**, meaning any property damage arising out of any act committed:

- (1) by or at the direction of any insured; and
- (2) with the intent to cause property damage.

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This exclusion does not apply to an Insured who has not cooperated in or contributed to the creation of an intentional loss, if that Insured has:

- (1) filed a police report, and
- (2) cooperated with law enforcement investigation or prosecution

relating to any other Insured causing the intentional loss.

Payment to an Insured, under this exception to exclusion 1.h. will be limited to the insurable interest of the Insured in such property, less any payments made to a mortgagee or other party with a legal secured interest in the property and subject to the other terms and conditions of this policy.

As a condition of payment for intentional loss caused by another Insured under this exception to exclusion 1.h., we may require an assignment of rights of recovery to the extent payment is made by us.

- i. **Microbial Organisms**, including but not limited to mold, mold spores, fungus, bacterium, or parasitic microorganisms.
- j. **Settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings.**

k. **Wet rot, dry rot, or deterioration.**

- 2. We do not insure against loss consisting of any of the following. Nor do we insure for loss that results when one or more of the following combines with other causes, events or conditions that are also excluded or excepted in this policy. However, any loss that ensues from the following, that is not otherwise excluded or excepted is covered.

a. **Weather Conditions.**

b. **Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.**

c. **Faulty, negligent, inadequate or defective:**

- (1) **planning, zoning, development, surveying, siting;**
- (2) **design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;**
- (3) **materials used in repair, construction, renovation or remodeling; or**
- (4) **maintenance;**

of part or all of any property whether on or off the residence premises.

SECTION I - CONDITIONS

- 1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:
 - a. to the Insured for more than the amount of the Insured's interest at the time of loss; or
 - b. for more than the applicable limit of liability.

Each time there is a loss to any building insured under Coverage A - Dwelling or Coverage B - Other Structures, the amount of insurance applicable to that building for loss by fire will be reduced by the amount of the loss. As repairs are made, the amount of insurance will be reinstated up to the limit of liability shown on the Declarations page.

A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. This provision shall not apply to personal property.

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2. **Residential Community Property Clause.** This policy, subject to all other terms and conditions, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses unless excluded by endorsement attached to this policy until the expiration of the policy or until cancelled in accordance with the terms and conditions of this policy.
3. **Your Duties After Loss.** In case of a loss to which this insurance may apply, you must see that the following are done:
- a. give prompt notice to us or our agent;
 - b. notify the police in case of loss by theft;
 - c. notify the credit card or fund transfer card company in case of loss under ADDITIONAL COVERAGES, Credit Card or Fund Transfer Card coverage;
 - d.
 - (1) protect the property from further damage;
 - (2) make reasonable and necessary repairs to protect the property; and
 - (3) keep an accurate record of repair expenses;
 - e. prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
 - f. as often as we reasonably require:
 - (1) show the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies; and
 - (3) submit to examinations under oath, while not in the presence of any other insured, and sign the same;
- (4) assure the attendance of employees, members of your household or others for examinations under oath to the extent it is within your power to do so.
 - g. send to us, within 91 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) the time and cause of loss;
 - (2) the interest of the insured and all others in the property involved and all liens on the property;
 - (3) other insurance which may cover the loss;
 - (4) changes in title or occupancy of the property during the term of the policy;
 - (5) specifications of damaged buildings and detailed repair estimates;
 - (6) the inventory of damaged personal property described in 3e above;
 - (7) receipts for Additional Living Expenses and Temporary Living Expenses incurred and records that support the Fair Rental Value loss; and
 - (8) evidence or affidavit that supports a claim under ADDITIONAL COVERAGES, Credit Card, Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.
 - h. provide us with receipts, bills or other records that support your claim for expenses under Identity Fraud Expense coverage.
4. **Our Duties After Loss:**
- a. Within 15 days after we receive your written notice of claim, we must:
 - (1) acknowledge receipt of the claim.

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If our acknowledgement of the claim is not in writing, we will keep a record of the date, method and content of our acknowledgement.

- (2) begin any investigation of the claim.
- (3) specify the information you must provide in accordance with Your Duties After Loss (item 3. above).

We may request more information, if during the investigation of the claim such additional information is necessary.

- b. After we receive the information we request, we must notify you in writing whether the claim will be paid or has been denied or whether more information is needed:

- (1) within 15 business days; or
- (2) within 30 days if we have reason to believe the loss resulted from arson.

- c. If we do not approve payment of your claim or require more time for processing your claim, we must:

- (1) give the reasons for denying your claim, or
- (2) give the reasons we require more time to process your claim. But we must either approve or deny your claim within 45 days after requesting more time.

- 5. Loss Settlement. Covered property losses are settled as follows:

- a. (1) personal property;
- (2) awnings, household appliances, outdoor antennas, and outdoor equipment, whether or not attached to buildings; and
- (3) structures that are not buildings;

It is our option to:

- (a) pay you the actual cash value; or

- (b) replace or to pay you our cost to replace the property with property of like kind, quality, age and condition; or

- (c) pay you the cost to repair or restore the property to the condition it was in just before the loss.

We will not pay more than the limit of liability shown on the Declarations Page for Coverage C, nor more than any other limits stated in the policy.

- b. All items under Coverage A - Dwelling and buildings under Coverage B at replacement cost without deduction for depreciation, subject to the following:

- (1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of deductible and without deduction for depreciation, but not more than the least of the following amounts:

- (a) the limit of liability under this policy that applies to the building;
- (b) the replacement cost of that part of the building damaged for like construction and use on the same premises; or
- (c) the necessary amount actually spent to repair or replace the damaged building.

- (2) If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:

- (a) the actual cash value of that part of the building damaged; or

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- (b) that proportion of the cost to repair or replace, after application of deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.
- (3) To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:
- (a) excavations, foundations, piers or any supports which are below the undersurface of the lowest basement floor;
 - (b) those supports in (a) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
 - (c) underground flues, pipes, wiring and drains.
- (4) We will pay no more than the actual cash value of the damage unless:
- (a) actual repair or replacement is complete. Repair or replacement must be completed within 365 days after loss unless you request in writing that this time limit be extended for an additional 180 days; or
 - (b) the cost to repair or replace the damage is both:
 - (i) less than 5% of the amount of insurance in this policy on the building; and
 - (ii) less than \$2,500.
6. Loss to a Pair or Set. In case of loss to a pair or set we may elect to:
- a. repair or replace any part to restore the pair or set to its value before the loss; or
 - b. pay the difference between actual cash value of the property before and after the loss.
7. Appraisal. If you and we do not agree on the amount of loss, either party can demand that the amount of the loss be determined by appraisal. If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand.
- The two appraisers will then select a competent, impartial umpire. If the two appraisers are not able to agree upon the umpire within 15 days, you and we can ask a judge of a court of record in the state where the residence premises is located to select an umpire.
- The appraisers will then set the amount of loss. If they submit a written report of any agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree within a reasonable time, they will submit their differences to the umpire. Written agreement signed by any two of these three will set the amount of the loss. Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be equally paid by you and us.
- B. Other Insurance. If a loss covered by this policy, other than loss covered in SECTION I - ADDITIONAL COVERAGES, Credit Card, Fund Transfer Card, Forgery, Counterfeit Money and Identity Theft Expense, is also covered by other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss.

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If a loss is covered in SECTION I - ADDITIONAL COVERAGES, Credit Card, Fund Transfer Card, Forgery, Counterfeit Money and Identity Theft Expense, the coverage provided is excess over the other insurance that covers the same loss. Other Insurance includes the coverage and any deductible required by such other insurance. This coverage is also excess over any other contractual conditions, rights or benefits that provide relief from or indemnification for your obligations to pay any amounts to any third party resulting from a loss covered under Credit Card, Fund Transfer Card, Forgery, Counterfeit Money and Identity Theft Expense. In no event, will we pay more than the applicable Limit of Insurance.

This policy does not apply to motorized golf carts and their equipment and accessories when an automobile policy also applies.

9. Suit Against Us. No action can be brought against us unless you have:

- a. given us notice of the loss,
- b. complied with all other policy provisions, and
- c. started the action

within two years and one day after the cause of action accrues.

10. Our Option. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property.

11. Loss Payment. We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment.

If we notify you that we will pay your claim, or part of your claim, we must pay within 5 business days after we notify you. If payment of your claim or part of your claim requires the performance of an act by you, we must pay within 5 business days after the date you perform the act.

12. Abandonment. You may not abandon property to us for any reason.

13. Mortgage Clause. The word "mortgagee" includes trustee.

- a. We will pay for any covered loss of or damage to buildings or structures to the mortgagee shown on the Declarations page as interests appear.
- b. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building or structure.
- c. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgagee has the right to receive loss payment if the mortgagee:
 - (1) At our request, pays any premiums due under this policy, if you have failed to do so.
 - (2) Submits a signed, sworn statement of loss within 91 days after receiving notice from us of your failure to do so.
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgagee.

All of the terms of this policy will then apply directly to the mortgagee.

Failure of the mortgagee to comply with c.(1), c.(2) or c.(3) above shall void this policy as to the interest of the mortgagee.

All of the terms of this policy will then apply directly to the mortgagee.

Failure of the mortgagee to comply with c.(1), c.(2) or c.(3) above shall void this policy as to the interest of the mortgagee.

d. If we pay the mortgagee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with terms of this policy:

- (1) The mortgagee's rights under the mortgage will be transferred to us to the extent of the amount we pay.
- (2) The mortgagee's right to recover the full amount of the mortgagee's claim will not be impaired.

At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest in this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest in this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest in this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

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- e. If this policy is cancelled, we will give the mortgagee specifically named on the Declarations page written notice of cancellation.

If we cancel the policy, we will give the mortgagee the same number of days notice of cancellation we give to you.

If you cancel the policy, we will give the mortgagee notice of cancellation to be effective on the date stated in the notice. The date of cancellation cannot be before the 10th day after the date we mail the notice.

We will not give notice of cancellation to any successor or assignee of the mortgagee named in this policy.

- f. If the property described under Coverage A - Dwelling is foreclosed under the deed of trust, the mortgagee may cancel this policy of insurance and will be entitled to any unearned premiums from this policy.

The mortgagee must credit any unearned premium against any deficiency owed by the borrower and return any unearned premium not so credited to the borrower. The unearned premium will be figured using the customary pro rata procedures.

- g. If we elect not to renew this policy, the mortgagee specifically named on the Declarations page will be given 30 days written notice of the nonrenewal.

14. **No Benefit to Ballee.** We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

15. **Salvage and Recovered Property.**

- a. We have an interest in the salvage value of any property for which we have made a payment under the Loss Settlement provision. At our option, property that we have paid for or replaced becomes our property.

- b. If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property may be retained by you. If you retain the property, the loss payment, or any lesser amount to which we agree, must be refunded to us.

16. **Concealment or Fraud.** With respect to all insureds, the entire policy will be void if whether before or after a loss any insured has:

- a. intentionally concealed or misrepresented any material fact or circumstance;
- b. engaged in fraudulent conduct; or
- c. made false statements;

relating to this insurance.

17. **Volcanic Eruption Period.** One or more volcanic eruptions that occur within a 72-hour period will be considered as one volcanic eruption.

18. **Catastrophe Claims.** If a claim results from a weather related catastrophe or a major natural disaster, each claim handling deadline shown under the **Your Duties After Loss, Our Duties After Loss** and **Loss Payment** provisions is extended for an additional 15 days.

Catastrophe or Major Natural Disaster means a weather related event which:

- a. is declared a disaster under the Texas Disaster Act of 1975; or
- b. is determined to be a catastrophe by the Texas Department of Insurance.

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SECTION II - LIABILITY COVERAGES

COVERAGE E - Personal Liability

If a claim is made or a suit is brought against an Insured for damages because of bodily injury or property damage caused by an occurrence to which this coverage applies, we will:

1. pay up to our limit of liability for the damages for which the Insured is legally liable; and
2. provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when the amount we pay or tender for damages resulting from the occurrence equals our limit of liability. This coverage does not provide defense to any Insured for criminal prosecution or proceedings.

COVERAGE F - Medical Payments To Others

We will pay the necessary medical expenses that are incurred or medically ascertained within three

years from the date of an accident causing bodily injury. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to you or regular residents of your household except residence employees. As to others, this coverage applies only:

1. to a person on the insured location with the permission of an Insured;
2. to a person off the insured location, if the bodily injury:
 - a. arises out of a condition on the insured location or the ways immediately adjoining;
 - b. is caused by the activities of an Insured;
 - c. is caused by a residence employee in the course of the residence employee's employment by an Insured; or
 - d. is caused by an animal owned by or in the care of an Insured.

SECTION II - EXCLUSIONS

1. Coverage E - Personal Liability and Coverage F - Medical Payments to Others do not apply to bodily injury or property damage:

- a. caused by the intentional or purposeful acts of any Insured, including conduct that would reasonably be expected to result in bodily injury to any person or property damage to any property.
- b. (1) arising out of or in connection with a business engaged in by an Insured. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the business;

(2) arising out of the rental or holding for rental of any part of any premises by an Insured. This exclusion does not apply to the rental or holding for rental of an insured location:

- (i) on an occasional basis if used only as a residence;
- (ii) in part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
- (iii) in part, as an office, school, studio or private garage;
- c. arising out of the rendering of or failure to render professional services;

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d. arising out of a premises:

- (1) owned by an insured;
- (2) rented to an insured; or
- (3) rented to others by an insured; that is not an insured location;

e. arising out of:

- (1) the ownership, maintenance, use, loading or unloading of motor vehicles or all other motorized land conveyances, including trailers, owned or operated by or rented or loaned to an insured;
- (2) the entrustment by an insured of a motor vehicle or any other motorized land conveyance to any person; or
- (3) vicarious liability, whether or not statutorily imposed, for the actions of anyone using a conveyance excluded in paragraph (1) or (2) above.

This exclusion does not apply to:

- (1) a trailer not towed by or carried on a motorized land conveyance;
- (2) a motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and:
 - (a) not owned by an insured; or
 - (b) owned by an insured and on an insured location;
- (3) a motorized golf cart when used to play golf on a golf course;
- (4) a vehicle or conveyance not subject to motor vehicle registration which is:
 - (a) used to service an insured's residence;
 - (b) designed for assisting the handicapped; or
 - (c) in dead storage on an insured location;

f. arising out of:

- (1) the ownership, maintenance, use, loading or unloading of a watercraft described below;
- (2) the entrustment by an insured of a watercraft described below to any person; or
- (3) vicarious liability, whether or not statutorily imposed, for the actions anyone using a watercraft described below.

Watercraft:

- (1) with inboard or inboard-outdrive motor power of more than 50 horsepower owned by or rented to an insured;
- (2) that is a sailing vessel, with or without auxiliary power, which is more than 35 feet in length owned by or rented to an insured;
- (3) powered by one or more outboard motors with more than 50 total horsepower if the outboard motor is owned by the insured. If acquired during the policy period, outboard motors of more than 50 total horsepower are covered for that policy period only; or
- (4) that is a personal watercraft. As used in this section, personal watercraft means a conveyance used or designed to be used on the water which is propelled by a water jet propulsion pump.

This exclusion does not apply while the watercraft is stored.

g. arising out of:

- (1) the ownership, maintenance, use, loading or unloading of an aircraft;
- (2) the entrustment by an insured of an aircraft to any person; or

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- (3) vicarious liability, whether or not statutorily imposed, for the actions of anyone using an aircraft.

An aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

- h. caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.
- i. which arises out of the transmission of a communicable disease by an insured through sexual contact.
- j. arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a controlled substance(s). Controlled substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.
- k. arising out of the commission of, attempting to flee from, or avoiding apprehension for a criminal act for which intent is a necessary element.

Exclusions d, e, f. and g. do not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured.

- 2. Coverage E - Personal Liability does not apply to:
 - a. liability:

- (1) for any loss assessment charged against you as a member of an association, corporation or community of property owners;

- (2) under any contract or agreement. However, this exclusion does not apply to written contracts:

- (a) that directly relate to the ownership, maintenance or use of an insured location; or
- (b) where the liability of others is assumed by the insured prior to an occurrence;

unless excluded in (1) above or elsewhere in this policy;

- b. property damage to property owned by the insured;
- c. property damage to property rented to, occupied or used by or in the care of the insured. This exclusion does not apply to property damage caused by fire, smoke or explosion;
- d. bodily injury to any person eligible to receive any benefits:
 - (1) voluntarily provided; or
 - (2) required to be provided; by the insured under any:
 - (1) workers' compensation law;
 - (2) non-occupational disability law; or
 - (3) occupational disease law;

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a. **bodily injury or property damage** for which an Insured under this policy:

- (1) is also an Insured under a nuclear energy liability policy; or
- (2) would be an Insured under that policy but for the exhaustion of its limit of liability.

A nuclear energy liability policy is one issued by:

- (1) American Nuclear Insurers;
 - (2) Mutual Atomic Energy Liability Underwriters;
 - (3) Nuclear Insurance Association of Canada;
- or any of their successors;

f. **bodily injury** to you or an Insured within the meaning of part a. or b. of "Insured" as defined.

g. **property damage** arising out of the actual, alleged, or threatened discharge, dispersal, release, escape, seepage or migration of pollutants however caused and whenever occurring. This includes any loss cost or expense arising out of any:

- (1) Request, demand or order that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or assess the effects of pollutants; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

3. **Coverage F - Medical Payments to Others** does not apply to **bodily injury**:

a. to a residence employee if the **bodily injury**:

- (1) occurs off the Insured location; and
- (2) does not arise out of or in the course of the residence employee's employment by an Insured;

b. to any person eligible to receive benefits:

- (1) voluntarily provided; or
 - (2) required to be provided;
- under any:

- (1) workers' compensation law;
- (2) non-occupational disability law; or
- (3) occupational disease law;

c. from any:

- (1) nuclear reaction;
 - (2) nuclear radiation; or
 - (3) radioactive contamination;
- all whether controlled or uncontrolled or however caused; or
- (4) any consequence of any of these;

d. to any person, other than a residence employee of an Insured, regularly residing on any part of the Insured location.

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

1. **Claim Expenses.** We pay:

a. expenses we incur and costs taxed against an Insured in any suit we defend;

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- b. premiums on bonds required in a suit we defend, but not for bond amounts more than the limit of liability for Coverage E. We need not apply for or furnish any bond;
 - c. reasonable expenses incurred by an Insured at our request, including actual loss of earnings (but not loss of other income) up to \$100 per day, for assisting us in the investigation or defense of a claim or suit;
 - d. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies;
 - e. prejudgment interest awarded against the Insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of liability, we will not pay any prejudgment interest based on that period of time after the offer.
2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by an Insured for bodily injury covered under this policy. We will not pay for first aid to you or any other Insured.
3. **Damage to Property of Others.** We will pay, at replacement cost, up to \$1,000 per occurrence for property damage to property of others caused by an Insured.

We will not pay for property damage:

- a. to the extent of any amount recoverable under SECTION I of this policy;
- b. caused intentionally by an Insured who is 13 years of age or older;
- c. to property owned by an Insured;
- d. to property owned by or rented to a tenant of an Insured or a resident in your household; or
- e. arising out of:
 - (1) a business engaged in by an Insured;

- (2) any act or omission in connection with a premises owned, rented or controlled by an Insured, other than the Insured location; or
- (3) the ownership, maintenance or use of aircraft, watercraft or motor vehicles or all other motorized land conveyances.

This exclusion does not apply to any motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and not owned by an Insured.

4. **Loss Assessment.** We will pay up to \$1,000 for your share of loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of:
- a. bodily injury or property damage not excluded under SECTION II of this policy; or
 - b. liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided:
 - (1) the director, officer or trustee is elected by the members of a corporation or association of property owners; and
 - (2) the director, officer or trustee serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.

This coverage applies only to loss assessments charged against you as owner or tenant of the residence premises.

We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

Regardless of the number of assessments, the limit of \$1,000 is the most we will pay for loss arising out of:

- a. one accident, including continuous or repeated exposure to substantially the same general harmful conditions; or

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- b. a covered act of a director, officer or trustee, an act involving more than one director, officer or trustee is considered to be a single act.

The following do not apply to this coverage:

- 1. SECTION II, Coverage E - Personal Liability Exclusion 2.a(1);
- 2. Condition 1, Policy Period, under SECTIONS I and II - CONDITIONS.

SECTION II - CONDITIONS

- 1. **Limit of Liability.** Our total liability under Coverage E for all damages resulting from any one occurrence will not be more than the limit of liability for Coverage E as shown in the Declarations. This limit is the same regardless of the number of insureds, claims made or persons injured. All bodily injury and property damage resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one occurrence.

Our total liability under Coverage F for all medical expenses payable for bodily injury to one person as the result of one accident will not be more than the limit of liability for Coverage F as shown in the Declarations.
- 2. **Severability of Insurance.** This insurance applies separately to each insured. This condition will not increase our limit of liability for any one occurrence.
- 3. **Concealment or Fraud.** We do not provide coverage to any insured who, whether before or after a loss, has:
 - a. intentionally concealed or misrepresented any material fact or circumstance;
 - b. engaged in fraudulent conduct; or
 - c. made false statements;
 relating to this insurance.
- 4. **Duties After Loss.** In case of an accident or occurrence, the insured will perform the following duties that apply. You will help us by seeing that these duties are performed:
 - a. give written notice to us or our agent as soon as is practical, which sets forth:
 - (1) the identity of the policy and insured;
 - (2) reasonably available information on the time, place and circumstances of the accident or occurrence; and
 - (3) names and addresses of any claimants and witnesses;
 - b. promptly forward to us every notice, demand, summons or other process relating to the accident or occurrence;
 - c. at our request, help us:
 - (1) to make settlement;
 - (2) to enforce any right of contribution or indemnity against any person or organization who may be liable to an insured;
 - (3) with the conduct of suits and attend hearings and trials;
 - (4) to secure and give evidence and obtain the attendance of witnesses;
 - d. under Damage to Property of Others, submit to us within 60 days after the loss, a sworn statement of loss and show the damaged property, if in the insured's control;
 - e. the insured will not, except at the insured's own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the bodily injury.
- 5. **Duties of an Injured Person - Coverage F - Medical Payments to Others.** The injured person or someone acting for the injured person will:
 - a. give us written proof of claim, under oath if required, as soon as is practical; and
 - b. authorize us to obtain copies of medical reports and records.

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The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.

6. **Payment of Claim - Coverage F. Medical Payments to Others.** Payment under this coverage is not an admission of liability by an insured or us.
7. **Suit Against Us.** No action can be brought against us unless there has been compliance with the policy provisions.

No one will have the right to join us as a party to any action against an insured. Also, no action with respect to Coverage E can be brought against us until the obligation of the insured has been determined by final judgment or agreement signed by us.

8. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an insured will not relieve us of our obligations under this policy.

9. **Other Insurance - Coverage E - Personal Liability.** This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

10. **Notice of Settlement of Liability Claim.** We will notify the insured in writing of any initial offer to compromise or settle a claim against the insured under the liability section of this policy. We will give the insured notice within 10 days after the date the offer is made.

We will notify the insured in writing of any settlement of a claim against the insured under the liability section of this policy. We will give the insured notice within 30 days after the date of the settlement.

SECTIONS I AND II - CONDITIONS

1. **Policy Period.** This policy applies only to loss in SECTION I or **bodily injury** or **property damage** in SECTION II, which occurs during the policy period.

2. **Liberalization Clause.** If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented through introduction of a subsequent edition of our policy.

3. **Waiver or Change of Policy Provisions.** A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

4. **Cancellation.**

- a. You may cancel this policy at any time. But

the effective date of cancellation cannot be earlier than the date of your request.

- b. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you or mailed to you at your last known address.

Proof of mailing shall be sufficient proof of notice.

- (1) When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.

- (2) When this policy has been in effect for less than 90 days and is not a renewal with us, we may cancel for any reason by letting you know at least 30 days before the date cancellation takes effect.

- (3) When this policy has been in effect for 90 days or more, or at any time if it is a renewal with us, we may cancel:

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- (a) if there is an increase in the hazard covered by this policy that is within your control and that would produce an increase in the premium/rate of this policy;
 - (b) if the Texas Department of Insurance determines that continuation of the policy would violate the Texas Insurance Code or any other laws governing the business of insurance in this state; or
 - (c) If you submit a fraudulent claim.
This can be done by letting you know at least 10 days before the date cancellation take effect. Our notice of cancellation must state the reason for cancellation.
- c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.
- d. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.
- e. We may not cancel this policy solely because you are an elected official.
5. **Nonrenewal.** We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your last known address, and any mortgagee named on the Declarations page, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice. If we fail to give you proper notice of our decision not to renew, you may require us to renew the policy.
- a. We may not refuse to renew this policy because of claims for losses resulting from natural causes.
 - b. We may not refuse to renew this policy solely because you are an elected official.
 - c. We may refuse to renew this policy if you have filed three or more claims under the policy in any three year period that do not result from natural causes.
- If you have filed two claims in a period of less than three years, we may notify you in writing, that if you file a third claim during the three-year period, we may refuse to renew this policy by providing you proper notice of our refusal to renew as provided above. If we do not notify you after the second claim, we may not refuse to renew this policy because of losses.
- A claim does not include a claim that is filed but is not paid or payable under the policy.
8. **Assignment.** Assignment of this policy will not be valid unless we give our written consent.
7. **Subrogation.** An Insured may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.
- If an assignment is sought, an Insured must sign and deliver all related papers and cooperate with us.
- Subrogation does not apply under SECTION II to Medical Payments to Others or Damage to Property of Others.
8. **Death.** If any person named in the Declarations or the spouse, if a resident of the same household, dies:
- a. we insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death;
 - b. **Insured includes:**
 - (1) any member of your household who is an Insured at the time of your death, but only while a resident of the residence premises; and
 - (2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPOUSE ACCESS

The following condition is added:

The named insured and we agree that the named insured and resident spouse are "customers" for purposes of state and federal privacy laws. The resident spouse will have access to the same information available to the named insured and may initiate the same transactions as the named insured.

The named insured may notify us that he/she no longer agrees that the resident spouse shall be treated as a "customer" for purposes of state and federal privacy laws, and we will not permit the resident spouse to access policy information.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

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ESA (02-05)

49319-0205

MENCHACA/USAA
POLICY 0035

Amendatory Endorsement
Section I - Exclusions

SECTION I - EXCLUSIONS

Under Section I - Exclusions, item 1. the first paragraph is deleted and replaced by the following:

1. We do not insure for loss caused directly or indirectly by any of the following regardless of:
 - (i) the cause of the excluded event or damage; or
 - (ii) other causes of the loss; or
 - (iii) whether the event or damage occurs, suddenly or gradually, involves isolated or widespread damage, or occurs as a result of any combination of these; or
 - (iv) whether other causes or events act concurrently or in any sequence with the excluded event to produce the loss.

Item 1. c. **Water Damage** is deleted and replaced by the following:

- c. **Water Damage**, meaning damage caused by or consisting of:
 - (1) flood, surface water, waves, tidal water, storm surge, tsunami, any overflow of a body of water, or spray from any of these, whether or not driven by wind;

- (2) any release, overflow, escape or rising of water otherwise held, contained, controlled or diverted by a dam, levee, dike or by any type of water containment, water diversion or flood control device;
- (3) water or water-borne material which backs up through sewers or drains or which overflows from a sump pump, sump well or similar device designed to drain water from the residence premises; or
- (4) water or water-borne material below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure;

arising from, caused by or resulting from human or animal forces, any act of nature, or any other source.

Direct loss by fire, explosion or theft resulting from water damage is covered.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

HO-TX (10-03)

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY

TEXAS SPECIAL PROVISIONS

SECTIONS I AND II - CONDITIONS

4. Cancellation is deleted and replaced by the following:

4. Cancellation.

a. You may cancel this policy at any time by notifying us of the date cancellation is to take effect. We will send you any refund due when the policy is returned to us.

b. If this policy has been in effect for less than 60 days and is not a renewal policy we may cancel this policy if:

(1) we identify a condition that:

- (a) creates an increased risk of hazard;
- (b) was not disclosed in the application for insurance coverage; and
- (c) is not the subject of a prior claim; or

(2) before the effective date of the policy, we have not accepted a copy of a required inspection report that:

- (a) was completed by an inspector licensed by the Texas Real Estate Commission or who is otherwise authorized to perform inspections; and
- (b) is dated not earlier than the 90th day before the effective date of the policy.

An inspection report is deemed accepted, unless we reject it before the 11th day after the date we receive it.

c. We may also cancel this policy at any time for any of the following reasons:

- (1) you do not pay the premium or any portion of the premium when due.
- (2) the Department of Insurance determines that continuation of the policy would violate the Texas Insurance Code or any other laws governing the business of insurance in this state.
- (3) you submit a fraudulent claim.
- (4) there is an increase in the hazard covered by this policy that is within your control and that would produce an increase in the premium/rate of this policy.

d. The effective date of cancellation cannot be before the 10th day after we mail the notice if we cancel for any of the reasons in c. or the 30th day after we mail notice if we cancel for any other reason. Our notice of cancellation must state the reason for cancellation.

e. If we cancel, our notice to you will state that if the refund is not included with the notice, it will be returned on demand.

f. We may not cancel this policy solely because you are an elected official.

OTHER POLICY PROVISIONS

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

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HO-TX (10-03)

MENCHACA/USAA
POLICY 0037

HO-141TX
(01-02)

WATER DAMAGE COVERAGE
(HO-3RTX only)
TEXAS

For an additional premium the following Water Damage Coverage is added to SECTION I - ADDITIONAL COVERAGES.

Water Damage Coverage.

1. We insure for direct, physical loss consisting of water damage to property described in Coverage A - Dwelling, Coverage B - Other Structures, and Coverage C - Personal Property caused by the constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a:
 - a. heating, air conditioning or automatic fire protective sprinkler system;
 - b. household appliance; or
 - c. plumbing system. Plumbing system includes shower pans, but does not include shower stall or shower bath enclosures.

This Water Damage Coverage includes the cost of tearing out and replacing any part of the building necessary to provide access to repair the system or appliance from which seepage or leakage occurred.

2. We do not cover loss to the system or appliance from which the water or steam escaped.

3. Except as specifically provided in this Water Damage Coverage endorsement, we do not provide coverage for damage caused by constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance regardless of any other cause or event contributing concurrently or in any sequence to the loss.
4. This Water Damage Coverage does not increase the limit of liability that applies to the damaged covered property.
5. Item 2.e. under SECTION I - PERILS INSURED AGAINST does not apply to the coverage provided in this Water Damage Coverage endorsement.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

Term Premium: \$37.00

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HO-141TX (01-02)

HO-17 (07-00)

ADJUSTED BUILDING COST ENDORSEMENT

It is agreed that the limit for SECTION I, Coverage A - Dwelling, shown in the Declarations of this policy, will be revised at each policy renewal to reflect the rate of change in the replacement cost of your dwelling. The resulting limit will be rounded to the next \$1000.

SECTION I, Coverages B (Other Structures), C (Personal Property) and D (Loss of Use) will also be adjusted. The rules then in use by us will determine the new limits for these coverages.

These limits will not be reduced without your consent.

You have the right to refuse any resulting change in limits. You must do so in writing before the effective date of such change. If you do reject the new limits, we will delete this endorsement from your policy.

We have the right to change to another replacement cost calculation tool as of any renewal date. We will give you at least 30 days prior written notice if we do this. Such change must apply to all similar policies issued by us.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

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HO-17 (07-00)

MENCHACA/USAA
POLICY 0039

HO-208TX (01-02)

WATER BACKUP OR SUMP PUMP OVERFLOW
TEXAS

Limit of Liability

All loss resulting from a single condition or series of related conditions which cause water or sewage to back up from outside the residence premises or which cause overflow from a sump pump or sump well designed to drain subsurface water from the interior foundation area is considered to be one loss. \$10,000 is the most we will pay in any one loss.

If the policy includes the Special Personal Property Coverage Endorsement, paragraph 2.b. is deleted and replaced by the following:

2.b. inherent vice, latent defect;

HO-6RTX only:

If the policy includes the UNIT-OWNERS COVERAGE A, Special Coverage Endorsement, item 3.b. is deleted and replaced by the following:

3.b. inherent vice, latent defect;

If the policy includes the Special Personal Property Coverage Endorsement, paragraph 2.b. is deleted and replaced by the following:

2.b. inherent vice, latent defect;

SECTION I

This endorsement applies to COVERAGE A - DWELLING, COVERAGE B - OTHER STRUCTURES, COVERAGE C - PERSONAL PROPERTY, and COVERAGE D - LOSS OF USE.

For an additional premium, we insure for direct, physical loss caused by:

1. water or sewage which backs up from outside the residence premises plumbing system through sewers or drains; or
2. water which overflows from a sump pump or sump well designed to drain subsurface water from the interior foundation area even if such overflow results from the mechanical breakdown of the sump pump. This coverage does not apply to direct physical loss of the sump pump, or related equipment, which is caused by mechanical breakdown.

This coverage does not apply to loss which is caused by the negligence of any insured.

SECTION I - PERILS INSURED AGAINST

For loss covered by this endorsement, if your policy is the:

HO-3RTX only:

Paragraph 3.b. under COVERAGE A - DWELLING and COVERAGE B - OTHER STRUCTURES is deleted and replaced by the following:

3.b. inherent vice, latent defect;

SECTION I - EXCLUSIONS

Exclusion 1.c. Water Damage is deleted and replaced by the following:

1.c. Water Damage, meaning:

- (1) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind; or
- (2) water below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

Direct loss by fire, explosion or theft resulting from water damage is covered.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

Term Premium \$40.00

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HO-208TX (01-02)

HO-728TX (01-03)

**REPLACEMENT COST COVERAGE - PERSONAL PROPERTY
TEXAS**

For an additional premium, we will settle losses to covered property at full replacement cost without deduction for depreciation, subject to the provisions of this endorsement.

- property that is either obsolete or useless to the insured at the time of loss;
- property that is not repaired, replaced, or restored, unless the entire loss is less than \$1500.

REPLACEMENT COST COVERAGE DEFINED

Replacement Cost means the cost, at the time of loss, of a new item identical to the one damaged, destroyed or stolen. If an identical item is no longer manufactured or cannot be obtained, replacement cost will be the cost of a new item which is:

- similar to the insured article, and
- of like quality and usefulness.

DEDUCTIBLE

The deductible shown on the Declarations Page applies.

PROPERTY COVERED

- Personal property covered in Coverage C, except personal property stated in Property Not Eligible;
- If covered in this policy: awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings.

PROPERTY NOT ELIGIBLE

Replacement cost coverage does not apply to:

- items of rarity or antiquity that cannot be replaced;
- articles whose age or history contributes substantially to their value. These include, but are not limited to, memorabilia, souvenirs and collectors' items;
- motorized golf carts and their equipment and accessories;
- articles not maintained in good or workable condition;

LOSS SETTLEMENT

SECTION I - CONDITIONS, Item 5., Loss Settlement does not apply to property covered by this endorsement. Instead, the following loss settlement procedures apply:

- a. For property that is covered by this endorsement it is our option to:
 - (1) replace, or pay you our cost to replace the property with new property of like kind and quality without deduction for depreciation, or
 - (2) pay you the cost to repair or restore the property to the condition it was in just before the loss, or
 - (3) pay you the necessary amount actually spent to repair or replace the damaged property.
- b. We will pay no more than actual cash value until repair or replacement of the damaged property is completed, unless the entire loss is less than \$1500.
- c. You may make a claim for loss on an actual cash value basis and then make claim within 365 days after the loss for any additional liability under the terms of this endorsement.
- d. For property that is not eligible for replacement cost coverage, it is our option to:
 - (1) pay you the actual cash value; or
 - (2) replace, or to pay you our cost to replace the property with property of like kind, age, quality and condition; or
 - (3) pay you the cost to repair or restore the property to the condition it was in just before the loss.

HO-728TX (01-03)

Page 1 of 2

e. We will not pay more than the Limit of Liability that applies to Coverage C. Nor will we pay more than any Special Limits of Liability that apply as stated in the policy to which this endorsement is attached.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

Term Premium \$76.29

Home Features

The following features were last updated in 2007 and used to estimate the rebuilding cost of your home. Please review these features for accuracy and advise us of any changes to your home. You can update home feature information in one of the following ways:

- Log on to usaa.com. From My USAA, go to the Policy Summary page.
- Call a member service representative at (800) 531-8111.

YEAR BUILT: 2004
STORIES: 1.0
SQUARE FEET*: 2577

*Square Feet: Includes built-in garage square feet, but excludes finished basement or attic square feet.

FOUNDATION(S): SLAB
EXTERIOR WALL: BRICK OVER FRAME
ROOF COVERING: ASPHALT/FIBERGLASS SHINGLE
GARAGE TYPE:
ATTACHED STRUCTURES:

INTERIOR WALL PARTITIONS: DRYWALL
INTERIOR WALL COVERINGS: PAINT
FLOOR COVERINGS: CARPET (STANDARD) WALL TO WALL
CERAMIC TILE
LAMINATED FLOORING
KITCHEN: 1 STANDARD
BATHROOMS: 3 STANDARD
FIREPLACE: 1
HEAT & AIR: HEATING - GAS
CENTRAL AIR CONDITIONING - SAME DUCT
WIRED FOR CENTRAL ALARM: YES

Make Sure You Have Adequate Coverage

Please remember it's your responsibility to review your coverage regularly and make sure your coverage is adequate to repair or rebuild your home, especially if it's been upgraded or changed. While we can help calculate an estimated minimum reconstruction cost, only you can decide whether you have enough coverage to protect you in the event of a significant loss.

Increasing your coverage limit on this policy doesn't increase your coverage limit for flood or wind policies. If you have a separate flood or wind policy on this property, contact the USAA General Agency for flood coverage at (800) 531-8444 and for wind coverage at (800) 531-8883, or your agent or insurer to confirm your coverage is adequate. Wind coverage is available in Alabama, Florida, North Carolina, South Carolina, Texas, and Mississippi.

FIRE/BURGLARY PROTECTION CREDIT

HO-216 (04-93)

For a premium credit, we acknowledge the installation of an alarm system, smoke detector or automatic sprinkler system approved by us on the residence premises. You agree to maintain this system in working order and to notify us promptly of any change made to the system or if it is removed.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

System	Type
FIRE/SMOKE	LOCAL

Total Policy Credit \$16.95

ALARM TYPES

Local: System sounds at the residence only.

Remote: System with a direct line to a police or fire system.

Central: System with a direct connection to a central, commercial location where the alarm is constantly monitored.

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HO-216 (04-93)

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MENCHACA/USAA
POLICY 0045

USE OF CREDIT INFORMATION DISCLOSURE

Insurer's Name	USAA TEXAS LLOYD'S COMPANY
Address	9800 FREDERICKSBURG ROAD SAN ANTONIO, TX 78288
Telephone Number (toll free if available)	(800) 531-8111

We will will not (choose one) obtain and use credit information on you or any other member(s) of your household as a part of the insurance credit scoring process.

If you have questions regarding this disclosure, contact the insurer at the above address or phone number. For information or other questions, contact the Texas Department of Insurance at 1-800-252-3439 or P.O. Box 149091, Austin, Texas 78714.

Article 21.49-2U, Sec. 7(d), of the Texas Insurance Code requires an insurer or its agents to disclose to its customers whether credit information will be obtained on the applicant or insured or on any other member(s) of the applicant's or insured's household and used as part of the insurance credit scoring process.

If credit information is obtained or used on the applicant or insured, or on any member of the applicant's or insured's household, the insurer shall disclose to the applicant the name of each person on whom credit information was obtained or used and how each person's credit information was used to underwrite or rate the policy. An insurer may provide this information with this disclosure or in a separate notice.

Adverse effect means an action taken by an insurer in connection with the underwriting of insurance for a consumer that results in the denial of coverage, the cancellation or nonrenewal of coverage, or the offer to and acceptance by a consumer of a policy form, premium rate, or deductible other than the policy form, premium rate, or deductible for which the consumer specifically applied.

Credit information is any credit-related information derived from a credit report itself, or provided in an application for personal insurance. The term does not include information that is not credit-related, regardless of whether the information is contained in a credit report or in an application for insurance coverage or is used to compute a credit score.

Credit score or insurance score is a number or rating derived from a mathematical formula, computer application, model, or other process that is based on credit information and used to predict the future insurance loss exposure of a consumer.

SUMMARY OF CONSUMER PROTECTIONS CONTAINED IN ARTICLE 21.49-2U

PROHIBITED USE OF CREDIT INFORMATION. *An insurer may not:*

- (1) use a credit score that is computed using factors that constitute unfair discrimination;*
- (2) deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information; or*
- (3) take an action that results in an adverse effect against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information.*

An insurer may not consider an absence of credit information or an inability to determine credit information for an applicant for insurance coverage or insured as a factor in underwriting or rating an insurance policy unless the insurer:

USE OF CREDIT INFORMATION DISCLOSURE

Insurer's Name	USAA TEXAS LLOYD'S COMPANY
Address	9800 FREDERICKSBURG ROAD SAN ANTONIO, TX 78288
Telephone Number (toll free if available)	(800) 531-8111

We will will not (choose one) obtain and use credit information on you or any other member(s) of your household as a part of the insurance credit scoring process.

If you have questions regarding this disclosure, contact the insurer at the above address or phone number. For information or other questions, contact the Texas Department of Insurance at 1-800-252-3439 or P.O. Box 149091, Austin, Texas 78714.

Article 21.49-2U, Sec. 7(d), of the Texas Insurance Code requires an insurer or its agents to disclose to its customers whether credit information will be obtained on the applicant or insured or on any other member(s) of the applicant's or insured's household and used as part of the insurance credit scoring process.

If credit information is obtained or used on the applicant or insured, or on any member of the applicant's or insured's household, the insurer shall disclose to the applicant the name of each person on whom credit information was obtained or used and how each person's credit information was used to underwrite or rate the policy. An insurer may provide this information with this disclosure or in a separate notice.

Adverse effect means an action taken by an insurer in connection with the underwriting of insurance for a consumer that results in the denial of coverage, the cancellation or nonrenewal of coverage, or the offer to and acceptance by a consumer of a policy form, premium rate, or deductible other than the policy form, premium rate, or deductible for which the consumer specifically applied.

Credit information is any credit related information derived from a credit report itself, or provided in an application for personal insurance. The term does not include information that is not credit-related, regardless of whether the information is contained in a credit report or in an application for insurance coverage or is used to compute a credit score.

Credit score or insurance score is a number or rating derived from a mathematical formula, computer application, model, or other process that is based on credit information and used to predict the future insurance loss exposure of a consumer.

SUMMARY OF CONSUMER PROTECTIONS CONTAINED IN ARTICLE 21.49-2U

PROHIBITED USE OF CREDIT INFORMATION. *An insurer may not:*

- (1) *use a credit score that is computed using factors that constitute unfair discrimination;*
- (2) *deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information; or*
- (3) *take an action that results in an adverse effect against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information.*

An insurer may not consider an absence of credit information or an inability to determine credit information for an applicant for insurance coverage or insured as a factor in underwriting or rating an insurance policy unless the insurer:

- (1) has statistical, actuarial, or reasonable underwriting information that: (A) is reasonably related to actual or anticipated loss experience; and (B) shows that the absence of credit information could result in actual or anticipated loss differences;
- (2) treats the consumer as if the applicant for insurance coverage or insured had neutral credit information, as defined by the insurer; or
- (3) excludes the use of credit information as a factor in underwriting and uses only other underwriting criteria.

NEGATIVE FACTORS. An insurer may not use any of the following as a negative factor in any credit scoring methodology or in reviewing credit information to underwrite or rate a policy of personal insurance:

- (1) a credit inquiry that is not initiated by the consumer;
- (2) an inquiry relating to insurance coverage, if so identified on a consumer's credit report; or
- (3) a collection account with a medical industry code, if so identified on the consumer's credit report.

Multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the home mortgage or motor vehicle lending industry, shall be considered by an insurer as only one inquiry.

EFFECT OF EXTRAORDINARY EVENTS. An insurer shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, or underwriting rules for a consumer whose credit information has been directly influenced by a catastrophic illness or injury, by the death of a spouse, child, or parent, by temporary loss of employment, by divorce, or by identity theft. In such a case, the insurer may consider only credit information not affected by the event or shall assign a neutral credit score.

An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the person's credit before granting an exception. An insurer is not required to consider repeated events or events the insurer reconsidered previously as an extraordinary event.

An insurer may also consider granting an exception to an applicant for insurance coverage or an insured for an extraordinary event not listed in this section. An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this article.

NOTICE OF ACTION RESULTING IN ADVERSE EFFECT. If an insurer takes an action resulting in an adverse effect with respect to an applicant for insurance coverage or insured based in whole or in part on information contained in a credit report, the insurer must provide to the applicant or insured within 30 days certain information regarding how an applicant or insured may verify and dispute information contained in a credit report.

DISPUTE RESOLUTION; ERROR CORRECTION. If it is determined through the dispute resolution process established under Section 611(a)(5), Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended, that the credit information of a current insured was inaccurate or incomplete or could not be verified and the insurer receives notice of that determination from the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured not later than the 30th day after the date of receipt of the notice.

After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary within 30 days, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall credit the amount of overpayment. The insurer shall compute the overpayment back to the shorter of the last 12 months of coverage; or the actual policy period.

TXEND3 (12-04)

Texas Coverage Options

Optional coverage for mold, slab and water damage were made available to you at the time your policy was issued. You can verify whether you have already purchased these coverage options by referring to the HO-D2 page of the enclosed Declarations. After this initial offering, these coverage options will only be available at your annual renewal date. If you have not purchased coverage, but would like to, please contact us immediately at (800) 531-8111.

Microbial Organism Coverage (Mold)

Your policy does not provide coverage for damage caused by or consisting of microbial organisms, which include but are not limited to mold, mold spores, fungus, bacterium, or parasitic microorganisms. Your policy provides coverage for water-damaged property resulting from a covered water loss. Microbial organisms present on water-damaged property may be removed or repaired in the process of repairing the water-damaged property.

Your policy does not provide coverage for mold testing, treating, containing or removing mold damage, or repairing, replacing, or restoring property damaged by mold. Loss of use of your property due to the presence of mold is not covered.

Optional Microbial Organism Coverage (Mold)

For an additional premium, you may purchase this coverage. Coverage options of: \$25,000, \$50,000, \$75,000 and 100 percent of your Dwelling Limit are available.

The chart on the next page provides the estimated annual cost by county.

Water Damage Coverage

Your policy does not provide coverage for damage caused by constant or repeated water seepage from household appliances, heating, and air conditioning systems, plumbing, or fire protective sprinkler systems. A typical example of this type of loss is a dripping drainpipe under the sink.

Slab or Other Foundation Coverage

Your policy does not include coverage for damage to a slab or foundation that is the result of settling, cracking, shrinking, bulging or expansion due to accidental discharge or leakage of water or steam from plumbing, heating or air conditioning systems. The available coverage limit is \$15,000.

IMPORTANT NOTE: All endorsements are subject to the policy's deductibles. To add slab or water damage coverage endorsements, your policy must carry minimum deductibles of 1 percent. To add the mold endorsement, your policy must carry minimum deductibles of 1 percent for the \$25,000, \$50,000 and \$75,000 limits and 3 percent for the 100 percent limit. After this initial offering, these coverage options will only be available at your annual renewal date. Prices may vary over time.

LOCATION (County/Zip Code)	Mold Coverage Limit			
	\$25,000	\$50,000	\$75,000	100% of Dwelling Limit*
Bexar (Zip - 78008, 78015, 78023, 78253 - 78261, 78266)	\$ 215	\$ 357	\$ 500	\$ 630
Remaining portions of Bexar County not listed above.	\$ 264	\$ 428	\$ 589	\$ 699
Arsenas, Brazoria (Zip - 77422, 77511, 77515, 77531, 77534, 77541, 77568, 77577), Calhoun (Zip - 77982, 78382), Matagorda (Zip - 77414, 77457, 77485, 77483)	\$1,322	\$1,787	\$2,072	\$2,342
Cameron (Zip - 78578, 78583, 78597), Remaining portions of Calhoun county not listed above, Chambers (Zip - 77665), Jefferson (Zip - 77619, 77627, 77640, 77642, 77651, 77705, 77710), Kenedy (Zip - 00188), Kleberg (Zip - 00188), Refugio, San Patricio, Willacy (Zip - 78590, 78597, 78598)	\$1,154	\$1,819	\$1,904	\$2,174
Remaining portions of Brazoria, Cameron, Chambers, Jefferson, Kenedy, Kleberg, Matagorda and Willacy counties not listed above.	\$1,045	\$1,510	\$1,795	\$2,085
Collin, Denton, Rockwall	\$ 134	\$ 184	\$ 234	\$ 294
Dallas	\$ 259	\$ 394	\$ 484	\$ 554
El Paso	\$ 57	\$ 107	\$ 137	\$ 197
Fort Bend - (Zip - 77053, 77083, 77085, 77450, 77459, 77479, 77489, 77545, 77583)	\$ 855	\$1,320	\$1,605	\$1,875
Remaining portions of Fort Bend County not listed above.	\$ 586	\$1,051	\$1,336	\$1,606
Galveston	\$ 926	\$1,288	\$1,509	\$1,728
Guadalupe (Zip - 78121, 78123, 78124, 78130, 78140, 78155, 78638, 78648, 78655, 78666)	\$ 167	\$ 310	\$ 410	\$ 540
Remaining portions of Guadalupe County not listed above.	\$ 191	\$ 333	\$ 476	\$ 606
Harris (Zip - 77068, 77070, 77090, 77336, 77338, 77339, 77345, 77346, 77357, 77365, 77373, 77375, 77379, 77388, 77389, 77396, 77357)	\$ 593	\$ 953	\$1,178	\$1,393
Harris (Zip - 77004 - 77006, 77008, 77009, 77011 - 77013, 77018 - 77018, 77020 - 77023, 77025 - 77037, 77039 - 77051, 77053, 77055, 77061 - 77067, 77074 - 77078, 77080, 77081, 77083 - 77088, 77091 - 77093, 77098, 77099, 77401, 77450, 77489, 77502 - 77504, 77508, 77520, 77521, 77530, 77532, 77547, 77562, 77571, 77587)	\$ 749	\$1,109	\$1,332	\$1,549
Remaining portions of Harris County not listed above.	\$ 480	\$ 820	\$1,043	\$1,260
McLennan	\$ 140	\$ 190	\$ 240	\$ 300
Nueces (Zip - 78343, 78380, 78410)	\$2,477	\$3,027	\$3,347	\$3,672
Nueces (Zip - 78373, 78401, 78402, 78404 - 78409, 78411 - 78419)	\$2,754	\$3,304	\$3,624	\$3,949
Remaining portions of Nueces County not listed above.	\$1,516	\$2,066	\$2,386	\$2,711
Tarrant	\$ 315	\$ 450	\$ 540	\$ 610
Travis	\$ 380	\$ 680	\$ 979	\$1,304
Anderson, Angelina, Cherokee, Ellis, Freestone, Gregg, Grimes, Henderson, Houston, Jasper, Leon, Limestone, Madison, Montgomery, Nacogdoches, Navarro, Newton, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Walker, Waller	\$ 83	\$ 133	\$ 183	\$ 243
Atascosa, Bandera, Dimmit, Duval, Edwards, Frio, Jim Hogg, Kerr, Kinney, La Salle, McMullen, Maverick, Medina, Real, Starr, Uvalde, Val Verde, Webb, Zapata, Zavala	\$ 90	\$ 140	\$ 190	\$ 250
Brewster, Crockett, Culberson, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Schleicher, Sutton, Terrell	\$ 111	\$ 161	\$ 211	\$ 271
Callahan, Coleman, Concho, McCulloch, Runnels, Taylor	\$ 138	\$ 188	\$ 238	\$ 298
Bowle, Camp, Cass, Delta, Fannin, Franklin, Grayson, Harrison, Hopkins, Hunt, Kaufman, Lamar, Marlon, Morris, Rains, Red River, Titus, Upshur, Van Zandt, Wood	\$ 182	\$ 212	\$ 262	\$ 322
Archer, Baylor, Clay, Foard, Hardeman, Haskell, Jones, Knox, Shackelford, Throckmorton, Wichita, Wilbarger	\$ 186	\$ 216	\$ 266	\$ 326
Austin, Bastrop, Bell, Blanco, Brazos, Burleson, Burnet, Caldwell, Colorado, Comal, Coryell, Dewitt, Falls, Fayette, Gillespie, Gonzales, Hays, Karnes, Kendall, Kimble, Lampasas, Lavaca, Lea, Llano, Mason, Menard, Milam, Robertson, San Saba, Washington, Williamson, Wilson	\$ 168	\$ 310	\$ 410	\$ 540
Cooke, Jack, Montague, Palo Pinto, Parker, Stephens, Wise, Young	\$ 188	\$ 218	\$ 268	\$ 328
Balley, Borden, Briscoe, Castro, Childress, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Gains, Garza, Hale, Hall, Hockley, Kent, King, Lamb, Lubbock, Lynn, Parmer, Motley, Scurry, Stonewall, Swisher, Terry, Yoakum	\$ 177	\$ 227	\$ 277	\$ 337
Bosque, Brown, Comanche, Eastland, Erath, Hood, Hamilton, Hill Johnson, Mills, Somervell	\$ 182	\$ 232	\$ 282	\$ 342

Andrews, Coke, Crane, Ector, Glasscock, Howard, Irion, Martin, Midland, Mitchell, Nolan, Reagan, Sterling, Tom Green, Upton, Ward, Winkler	\$ 247	\$ 297	\$ 347	\$ 407
Armstrong, Carson, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Wheeler	\$ 258	\$ 308	\$ 358	\$ 418
Bee, Brooks, Goliad, Hardin, Hidalgo, Jackson, Jim Wells, Liberty, Live Oak, Orange, Victoria, Wharton	\$ 586	\$1,051	\$1,336	\$1,606

*Optional Mold coverage is available up to 100 percent of your Coverage A (Dwelling) limit of liability. This column quotes 100 percent mold coverage premium for a home valued at \$175,000. To determine the exact cost please contact a USAA representative by calling (800) 531-8111. Purchase of any of the above endorsements is subject to underwriting review. Prices may vary over time.

**Consumer Bill of Rights
Homeowners, Dwelling & Renters Insurance**

AVISO: Este documento es un resumen de sus derechos como asegurado. Usted tiene el derecho a llamar a su compañía y pedir una copia de estos derechos en español.

What is the Bill of Rights?

This Bill of Rights is a summary of your rights and does not become a part of your policy. The Texas Department of Insurance (TDI) adopted the Bill of Rights and requires insurance companies to provide you a copy when they issue your policy.

Texas law gives you certain rights regarding your homeowners, dwelling and renters insurance. This Bill of Rights identifies your rights specified by rule or by state statute, but it does not include all your rights. Also, some exceptions to the rights are not listed here. If your agent, company, or adjuster tells you that one of these rights does not apply to you, contact TDI Consumer Protection at 1-800-252-3439 (463-6515 in Austin) (111-1A), P.O. Box 149091, Austin, TX 78714-9091. For a list of the specific law(s) and/or rule(s) summarized in each item of this Bill of Rights, or if you have questions or comments contact the Office of Public Insurance Counsel at 333 Guadalupe, Suite 3-120, Austin, TX 78701 (512-322-4143) or <http://www.opic.state.tx.us>.

This Bill of Rights does not address your responsibilities. Your responsibilities concerning your insurance can be found in your policy. Failure to meet your obligations may affect your rights.

Getting information from the Department of Insurance
and Your Insurance Company

1. **INFORMATION FROM TDI.** You have the right to call the TDI free of charge at 1-800-252-3439 or 463-6515 in Austin to learn more about:

- your rights as an insurance consumer;
- the license status of an insurance company or agent;
- the financial condition of an insurance company;
- the complaint ratio and type of consumer complaints filed against an insurance company;
- use of credit information by insurance companies, including which insurance companies use it and access to each company's credit scoring model;
- an insurance company's rates filed with the state;
- an insurance company's underwriting guidelines (subject to exemptions in the Public Information Act, also known as the Open Records Act);
- the Texas FAIR Plan, designed to help consumers who have been denied coverage by at least two insurance companies;
- Helpinsure.com, a service to help Texans shop for homeowners insurance;
- the Market Assistance Program (MAP) 1-888-799-MAPP (6277); designed to help those in underserved areas obtain insurance; and
- other consumer concerns.

You can also find some of this information on the TDI website at <http://www.tdi.state.tx.us>.

2. **INFORMATION FROM YOUR INSURANCE COMPANY.** You have the right to a toll-free number to call your insurance company free of charge with questions or complaints. You can find this number on a notice accompanying your policy. This requirement does not apply to small insurance companies.

What you should know before you buy insurance

3. PROHIBITED STATEMENTS. Your insurance company or agent is prohibited from making false, misleading, or deceptive statements to you relating to insurance.

4. LENDER-REQUIRED INSURANCE. A lender cannot require you to purchase insurance on your property in an amount that exceeds the replacement cost of the dwelling and its contents as a condition of financing a residential mortgage or providing other financing arrangements for the property, regardless of the amount of the mortgage or other financing arrangements. In determining the replacement cost of the dwelling, a lender cannot include the fair market value of the land on which a dwelling is located.

5. CREDIT INFORMATION. An insurance company cannot deny you insurance solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to offer coverage. (For additional information see the section of this Bill of Rights entitled *What you should know about insurance companies' use of credit information.*)

6. APPLIANCE RELATED WATER DAMAGE CLAIMS. An insurance company cannot deny you insurance or increase your premium based on a prior appliance-related water damage claim if:

- the claim has been properly repaired or remediated; and
- the repair or remediation was inspected and certified unless three such claims have been filed and paid in a three-year period.

NOTE: A claim includes a claim filed by you or a claim filed on your property.

7. WATER CLAIMS/MOLD DAMAGE OR CLAIMS. An insurance company cannot deny you insurance based:

- solely on a single prior water damage claim.
- on prior mold damage or a prior mold claim if:
- the damage or claim was properly repaired or remediated; and
- the repair or remediation was inspected and certified.

NOTE: A claim includes a claim filed by you or a claim filed on your property.

8. PROPERTY CONDITION. Voluntary Inspection Program: You have the right to have an independent inspection of your property by any person authorized by the Commissioner of Insurance to perform inspections. Once the inspector determines that your property meets certain minimum requirements and issues you an inspection certificate, no insurer may deny coverage based on property conditions without reinspecting your property. If an insurer then denies coverage, the insurer must identify, in writing, the specific problem(s) that makes your property uninsurable. You can find a list of available inspectors on the TDI website at www.tdi.state.tx.us/consumer/vipcommish.html or you can contact TDI for the list directly at (512) 322-2259.

9. SAFETY NET. You have the right to buy basic homeowners insurance through the Texas Fair Access to Insurance Requirements Plan, also known as the Texas FAIR Plan, if you have been denied coverage by two insurance companies. Your property must meet certain requirements, and eligibility for FAIR Plan coverage must be re-established every two years. You can access a list of insurance agents who are authorized to sell this coverage on the Texas FAIR Plan Association website at www.texasfairplan.org or by calling 1-800-466-6680.

10. WINDSTORM COVERAGE. For property located in areas designated by the Commissioner in certain counties on or near the coast, you have the right to buy windstorm and hail coverage from the Texas Windstorm Insurance Association. Your property must meet certain requirements, and the basic coverage is limited to a maximum amount set each year by the Commissioner of Insurance. This right applies whether or not you buy other insurance for your house. In all other counties your homeowners or dwelling policy includes this coverage. You may be able to purchase additional coverage from the Association.

11. ELECTRONIC PAYMENTS. If you authorize your insurer to withdraw your premium payments directly from your financial institution, including your escrow account, your insurer cannot increase the amount withdrawn unless:

- the insurer notifies you of the premium increase at least 30 days prior to its effective date and provides a postage paid form you can use to object to the increase; and
- you do not notify the insurer or financial institution that you object to the increase at least 5 days prior to the increase.

This does not apply to premium increases specifically scheduled in the original policy, to increases based on policy changes you request, or to an increase that is less than \$10 or 10% of the previous month's payment.

12. NOTICE OF REDUCED COVERAGE. If an insurer uses an endorsement to reduce the amount of coverage provided by your policy, the insurer must give you a written explanation of the change made by the endorsement. The insurer must provide the explanation before the effective date of the new or renewal policy. An insurance company cannot reduce coverage during the policy period unless you request the change. If you request the change, the company is not required to provide notice.

13. NOTICE OF PREMIUM INCREASE. If your insurer intends to increase your premium by 10% or more upon renewal, the insurer must send you notice of the rate increase at least 30 days before your renewal date.

14. EXPLANATION OF DENIAL. Upon request, you have the right to be told in writing why you have been denied coverage. The written statement must fully explain the decision, including the precise incidents, circumstances, or risk factors that disqualified you. It must also state the sources of information used.

NOTE: The obligation to provide a written explanation applies to insurance companies directly. An independent agent does not have a specific duty to quote the lowest possible rate to a consumer or to provide a written statement explaining why the agent did not offer the consumer the lowest possible rate.

15. RATE DIFFERENTIAL WITHIN A COUNTY. If an insurer subdivides a county for the purposes of charging different rates for each subdivision, the difference between the lowest and the highest rate cannot exceed 15% unless actuarially justified.

16. RIGHT TO PRIVACY. You have the right to prevent an insurance company, agent, adjuster or financial institution from disclosing your personal financial information to companies that are not affiliated with the insurance company or financial institution. Some examples are income, social security number, credit history and premium payment history.

If you apply for a policy, the insurance company or financial institution must notify you if it intends to share financial information about you and give you at least 30 days to refuse. This refusal is called "opting out." If you buy a policy, the insurance company or financial institution must tell you what information it collects about you and whether it intends to share any of the information, and give you at least 30 days to opt out. Agents and adjusters who intend to share your information with anyone other than the insurance company or financial institution must give you similar notices.

You can opt out at any time. Your decision to opt out remains in effect unless you revoke it.

These protections do not apply to information:

- publicly available elsewhere;
- insurance companies or financial institutions are required by law to disclose; or
- insurance companies or financial institutions must share in order to conduct ordinary business activities.

What you should know about cancellation and nonrenewal

Cancellation means that before the end of the policy period the insurance company:

- terminates the policy;
- reduces or restricts coverage under the policy; or
- refuses to provide additional coverage to which you are entitled under the policy.

Refusal to renew and non-renewal mean the policy terminates at the end of the policy period.

The policy period is shown on the declarations page at the front of your policy.

17. LIMITATION ON CANCELLATION FOR HOMEOWNERS AND RENTERS POLICIES. After your initial homeowners or renters policy with your company has been in effect for 60 days or more, that insurance company cannot cancel your policy unless:

- you don't pay your premium when due;
- you file a fraudulent claim;
- there is an increase in the hazard covered by the policy that is within your control and results in an increase in the policy premium; or
- TDI determines continuation of the policy would result in violation of insurance laws.

If your policy has been in effect for less than 60 days, your insurance company cannot cancel your policy unless:

- one of the reasons listed above applies;
- the insurance company identifies a condition that
- creates an increase in hazard;
- was not disclosed on your application; and
- is not the subject of a prior claim; or
- the insurance company rejects a required inspection report within 10 days after receiving the report. The report must be completed by a licensed or authorized inspector and cannot be more than 90 days old.

18. LIMITATION ON CANCELLATION FOR DWELLING POLICIES. After your initial dwelling policy with your company has been in effect for 90 days, that insurance company cannot cancel your policy unless:

- you don't pay your premium when due;
- you file a fraudulent claim;

- there is an increase in the hazard covered by the policy that is within your control and results in an increase in the policy premium; or
- TDI determines continuation of the policy would result in violation of insurance laws.

19. *NOTICE OF CANCELLATION.* To cancel your policy, your insurance company must mail notice at least 10 days notice of the cancellation. Your policy may provide for even greater notice.

20. *POLICYHOLDER'S RIGHT TO CANCEL.* You have the right to cancel your policy at any time and receive a refund of the remaining premium.

21. *CHANGE IN MARITAL STATUS.* If your marital status changes, you have the right to continue your insurance coverage. You have a right to a new policy in your name that has coverages which most nearly approximate the coverages of your prior policy, including the same expiration date. The insurance company cannot date the new policy so that a gap in coverage occurs.

22. *USE OF CLAIMS HISTORY TO NONRENEW.* Your insurance company cannot use claims you filed as a basis to non-renew your policy unless:

- you file three or more claims in any 3-year period; and
- your insurer notified you in writing after the second claim that filing a third claim could result in non-renewal of your policy.

In determining the number of claims filed, your insurance company cannot include:

- claims for damage from natural causes, including weather-related damage;
- appliance-related water damage claims where the repairs have been inspected and certified; or
- claims filed but not paid or payable under the policy.

NOTE: An insurance company can count appliance-related claims if 3 or more such claims are filed and paid within a 3-year period.

23. *USE OF CREDIT INFORMATION TO NONRENEW.* An insurance company cannot refuse to renew your policy solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to renew coverage. (For additional information see the section of this Bill of Rights entitled *What you should know about insurance companies' use of credit information.*)

24. *NOTICE OF CHANGE IN POLICY FORM.* Your insurer must notify you in writing of any difference between your current policy and each policy offered to you when the policy renews.

25. *NOTICE OF NONRENEWAL.* If the insurance company does not mail you notice of nonrenewal at least 30 days before your policy expires, you have the right to require the insurance company to renew your policy.

26. *EXPLANATION OF CANCELLATION OR NONRENEWAL.* Upon request, you have the right to a written explanation of an insurance company's decision to cancel or non-renew your policy. The written statement must fully explain the decision, including the precise incidents, circumstances, or risk factors that disqualified you. It must also state the sources of information used.

What you should know when you file a claim

27. FAIR TREATMENT. You have the right to be treated fairly and honestly when you make a claim. If you believe an insurance company has treated you unfairly, call the Department of Insurance at 1-800-252-3439 (463-6515 in Austin) or download a complaint form from the TDI at <http://www.tdi.state.tx.us>. You can complete a complaint form on-line via the Internet or fax it to TDI at 512-475-1771.

28. SETTLEMENT OFFER. You have the right to reject any settlement amount, including any unfair valuation, offered by the insurance company. You have the right to have your home repaired by the repair person of your choice.

29. EXPLANATION OF CLAIM DENIAL. Your insurance company must tell you in writing why your claim or part of your claim was denied.

30. TIMEFRAMES FOR CLAIM PROCESSING AND PAYMENT. When you file a claim on your own policy, you have the right to have your claim processed and paid promptly. If the insurance company fails to meet required claims processing and payment deadlines, you have the right to collect 18% annual interest and attorney's fees in addition to your claim amount.

Generally, within 15 calendar days, your insurance company must acknowledge receipt of your claim and request any additional information reasonably related to your claim. Within 15 business days (30 days if the company reasonably suspects arson), after receipt of all requested information, the company must approve or deny your claim in writing. The law allows the insurance company to extend this deadline up to 45 days if it notifies you that more time is needed and tells you why.

After notifying you that your claim is approved, your insurance company must pay the claim within 5 business days.

If your claim results from a weather-related catastrophe or other major natural disaster as defined by TDI, your insurance company may take 45 additional days to approve or deny your claim and 15 additional days to pay your claim.

31. RELEASE OF CLAIM FUNDS. Often an insurance company will make a claim check payable to you and your mortgage company or other lender and will send it to the lender. In that case, the lender must notify you within 10 days of receipt of the check and tell you what you must do to get the funds released to you.

Once you request the funds from the lender, within 10 days the lender must:

- release the money to you; or
- tell you in specific detail what you must do to get the money released.

If the lender does not provide the notices mentioned above or pay the money to you after all requirements have been met, the lender must pay you interest on the money at 10% per year from the time the payment or the notices were due.

32. NOTICE OF LIABILITY CLAIM SETTLEMENT. Your insurance company must notify you if it intends to pay a liability claim against your policy. The company must notify you in writing of an initial offer to compromise or settle a claim against you no later than the 10th day after the date the offer is made. The company must notify you in writing of any settlement of a claim against you no later than the 30th day after the date of the settlement.

33. INFORMATION NOT REQUIRED FOR CLAIM PROCESSING. You have the right to refuse to provide your insurance company with information that does not relate to your claim. In addition, you may refuse to provide your federal income tax records unless your insurer gets a court order or your claim involves lost income or a fire loss.

What you should know about prohibited discrimination

34. PROTECTED CLASSES. An insurance company cannot discriminate against you by refusing to insure you; limiting the amount, extent or kind of coverage available to you; charging you a different rate for the same coverage; or refusing to renew your policy:

- because of race, color, religion, gender, marital status, disability or partial disability or national origin; or

unless justified by actual or anticipated loss experience, because of age or geographic location.

35. AGE OF HOUSE. An insurance company cannot refuse to insure your property based on the age of your house. However, an insurance company may refuse to sell you insurance coverage based on the condition of your property, including the condition of your plumbing, heating, air conditioning, wiring and roof.

36. VALUE OF PROPERTY. An insurance company cannot refuse to insure your property because the value is too low or because the company has established minimum coverage amounts.

37. UNDERWRITING GUIDELINES. Underwriting guidelines may not be unfairly discriminatory and must be based on sound actuarial principles.

38. EQUAL TREATMENT. Unless based on sound actuarial principles, an insurance company may not treat you differently from other individuals of the same class and essentially the same hazard. If you sustain economic damages as a result of such unfair discrimination, you have the right to sue that insurance company in Travis County District Court.

If your suit prevails, you may recover economic damages, court costs and attorney and necessary expert witness fees. If the court finds the insurance company knowingly violated your rights, it may award up to an additional \$25,000 per claimant.

You must bring the suit on or before the second anniversary of the date you were denied insurance or the unfair act occurred or the date you reasonably should have discovered the occurrence of the unfair act. If the court determines your suit was groundless and you brought the lawsuit in bad faith, or brought it for the purposes of harassment, you will be required to pay the insurance company's court costs and attorney fees.

What you should know about insurance companies' use of credit information

39. REQUIRED DISCLOSURE. If an insurance company uses credit information to make underwriting or rating decisions, the company must provide you a disclosure statement within 10 days after receiving your completed application for insurance.

The disclosure indicates whether the insurer will obtain and use your credit information and lists your specific legal rights, including:

- credit information insurance companies cannot use against you;
- how you can get reasonable exceptions that your insurer is required to make to its use of credit information if certain life events, such as divorce, death of a close family member, or identity theft, hurt your credit;

- the notice* an insurer must send you when making a credit-based decision that harms your ability to get or keep insurance or requires you to pay a higher premium; and
- how you can dispute credit information and require an insurer to re-rate your policy if the rate was increased because of inaccurate or unverifiable credit information.

*The notice must include a description of up to four primary factors that influenced the action taken by the insurer. Generalized terms such as "poor credit rating" are not sufficient.

Insurers must use the disclosure form (CD-1) adopted by the Commissioner or an equivalent disclosure form filed prior to use with TDI. The CD-1 is available at www.tdi.state.tx.us/company/pccrdtds.html or by calling 1-800-252-3439. Additional information regarding insurers' use of credit information is available at www.tdi.state.tx.us/commish/credit.html.

What you should know about enforcing your rights

40. FILING COMPLAINTS. You have the right to complain to TDI about any insurance company and/or insurance matter and to receive a prompt investigation and response to your complaint. To do so, you should:

- call TDI's *Consumer Help Line* at 1-800-252-3439, in Austin 463-6515 for service in both English and Spanish;
- write to the Texas Department of Insurance, Consumer Protection (111-1A), P.O. Box 149091, Austin, Texas 78714-9091;
- e-mail TDI at ConsumerProtection@tdi.state.tx.us;
- fax your complaint to (512) 475-1771;
- download or complete a complaint form on-line from the TDI website at <http://www.tdi.state.tx.us>, or
- call the TDI Publications/Complaint Form order line (24 hours) at 1-800-599-SHOP (7467), in Austin 305-7211.

NOTE: TDI offers interpreter services and publications in alternate formats. Persons needing more information in alternate layouts or languages can call the *TDI Consumer Help Line* listed above.

41. RIGHT TO SUE. If an insurance company violates your rights, you may be able to sue that company in court, including small claims court, with or without an attorney.

42. BURDEN OF PROOF. If you sue to recover under your insurance policy, the insurance company has the burden of proof as to any application of an exclusion in the policy and any exception to or other avoidance of coverage claimed by the insurer.

43. REQUESTING NEW RULES. You have the right to ask in writing that TDI make or change rules on any residential property homeowners insurance issue that concerns you. Send your written request to: Texas Department of Insurance, Attn: Commissioner (113-2A), P.O. Box 149104, Austin, TX 78714-9104.

APPENDIX 6

C

Effective: April 1, 2005

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Insurance Code

Title 5. Protection of Consumer Interests ([Refs & Annos](#))

Subtitle C. Deceptive, Unfair, and Prohibited Practices

▣ [Chapter 541](#). Unfair Methods of Competition and Unfair or Deceptive Acts or Practices ([Refs & Annos](#))

▣ [Subchapter B](#). Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined

→→ **§ 541.060. Unfair Settlement Practices**

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(1) misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;

(2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of:

(A) a claim with respect to which the insurer's liability has become reasonably clear; or

(B) a claim under one portion of a policy with respect to which the insurer's liability has become reasonably clear to influence the claimant to settle another claim under another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion;

(3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

(4) failing within a reasonable time to:

(A) affirm or deny coverage of a claim to a policyholder; or

(B) submit a reservation of rights to a policyholder;

(5) refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the

basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy;

(6) undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, unless the payment is a compromise settlement of a doubtful or disputed claim;

(7) refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

(8) with respect to a Texas personal automobile insurance policy, delaying or refusing settlement of a claim solely because there is other insurance of a different kind available to satisfy all or part of the loss forming the basis of that claim; or

(9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person unless:

(A) a court orders the claimant to produce those tax returns;

(B) the claim involves a fire loss; or

(C) the claim involves lost profits or income.

(b) Subsection (a) does not provide a cause of action to a third party asserting one or more claims against an insured covered under a liability insurance policy.

CREDIT(S)

Added by [Acts 2003, 78th Leg., ch. 1274, § 2, eff. April 1, 2005](#).

HISTORICAL AND STATUTORY NOTES

2009 Main Volume

Prior Laws:

Acts 1909, 31st Leg., p. 192.

Rev.Civ.St.1911, art. 4954.

Acts 1929, 41st Leg., 1st C.S., ch. 3, § 1.

Vernon's Ann.Civ.St. art. 5053.

APPENDIX 7

C

Effective: April 1, 2005

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Insurance Code

Title 5. Protection of Consumer Interests ([Refs & Annos](#))

Subtitle C. Deceptive, Unfair, and Prohibited Practices

▣ [Chapter 541](#). Unfair Methods of Competition and Unfair or Deceptive Acts or Practices ([Refs & Annos](#))

▣ [Subchapter D](#). Private Action for Damages

→→ **§ 541.151. Private Action for Damages Authorized**

A person who sustains actual damages may bring an action against another person for those damages caused by the other person engaging in an act or practice:

(1) defined by Subchapter B [\[FN1\]](#) to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance; or

(2) specifically enumerated in [Section 17.46\(b\), Business & Commerce Code](#), as an unlawful deceptive trade practice if the person bringing the action shows that the person relied on the act or practice to the person's detriment.

CREDIT(S)

Added by [Acts 2003, 78th Leg., ch. 1274, § 2, eff. April 1, 2005](#).

[\[FN1\]](#) [V.T.C.A., Insurance Code § 541.051 et seq.](#)

HISTORICAL AND STATUTORY NOTES

2009 Main Volume

Prior Laws:

Acts 1973, 63rd Leg., p. 335, ch. 143, § 2(a) to (c).

Acts 1985, 69th Leg., ch. 22, § 3.

Acts 1995, 74th Leg., ch. 414, § 13.

V.A.T.S. Insurance Code, art. 21.21, § 16(a).

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Due process constraints on punitive damage awards: Are there any? Jane Webre, 55 Tex.B.J. 14 (1992).

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APPENDIX 8

C

Effective: September 28, 2011

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Insurance Code

Title 5. Protection of Consumer Interests ([Refs & Annos](#))

Subtitle C. Deceptive, Unfair, and Prohibited Practices

▣ [Chapter 541](#). Unfair Methods of Competition and Unfair or Deceptive Acts or Practices ([Refs & Annos](#))

▣ [Subchapter D](#). Private Action for Damages

→→ **§ 541.152. Damages, Attorney's Fees, and Other Relief**

(a) A plaintiff who prevails in an action under this subchapter may obtain:

- (1) the amount of actual damages, plus court costs and reasonable and necessary attorney's fees;
- (2) an order enjoining the act or failure to act complained of; or
- (3) any other relief the court determines is proper.

(b) Except as provided by Subsection (c), on a finding by the trier of fact that the defendant knowingly committed the act complained of, the trier of fact may award an amount not to exceed three times the amount of actual damages.

(c) Subsection (b) does not apply to an action under this subchapter brought against the Texas Windstorm Insurance Association.

CREDIT(S)

Added by [Acts 2003, 78th Leg., ch. 1274, § 2, eff. April 1, 2005](#). Amended by [Acts 2011, 82nd Leg., 1st C.S., ch. 2 \(H.B. 3\), § 2, eff. Sept. 28, 2011](#).

HISTORICAL AND STATUTORY NOTES

2014 Electronic Pocket Part Update

2011 Legislation

Section 64 of Acts 2011, 82nd Leg., ch. 2 (H.B. 3) provides:

“If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.”

2009 Main Volume

Prior Laws:

Acts 1973, 63rd Leg., p. 335, ch. 143, § 2(a) to (c).

Acts 1985, 69th Leg., ch. 22, § 3.

Acts 1995, 74th Leg., ch. 414, § 13.

[V.A.T.S. Insurance Code, art. 21.21, § 16\(b\).](#)

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2014 Electronic Pocket Part Update

ALR Library

[126 ALR 1439](#), What Persons or Corporations, Contracts or Policies, Are Within Statutory Provisions Allowing Recovery of Attorneys' Fees or Penalty Against Insurance Companies or Against Companies Dealing in Specified Kinds of...

Encyclopedias

[TX Jur. 3d Insurance Contracts and Coverage § 487](#), Damages.

[TX Jur. 3d Insurance Contracts and Coverage § 488](#), Treble Damages.

APPENDIX 9

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Ike's insured losses total almost \$12 billion



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By [The Associated Press](#)

Published: 29 January 2010 02:34 AM

Updated: 26 November 2010 03:15 PM

AUSTIN - Hurricane Ike was the costliest weather catastrophe in Texas history in terms of insurance coverage, leaving behind nearly \$12 billion in insured damage, an industry group reported Thursday.

Total windstorm claims in Texas from Ike totaled \$9.8 billion, according to a statement from the Insurance Council of Texas.

The National Flood Insurance Program said Texas residents filed nearly 44,000 flood claims from Ike for almost \$2.2 billion, the council said.

Ike made landfall in the Galveston area on Sept. 13, 2008, with a devastating 16-foot storm surge and 110-mph winds.

State officials previously have said Ike was the costliest natural disaster in Texas history, with overall damage topping \$29 billion and more than three dozen lives lost.

"Hurricane Ike took the same path as Galveston's 1900 storm that claimed more than 6,000 lives," said Mark Hanna, a spokesman for the council. "Thankfully, coastal residents had been adequately warned for Hurricane Ike, but few were prepared for Ike's destructive storm surge. Many residents who lost everything did not have flood insurance."

The Texas Department of Insurance reported receiving more than 800,000 windstorm claims from Ike, including claims from Texas Windstorm Insurance Association policy holders. TWIA is still getting damage claims from Ike and expects to pay out \$1.8 billion in claims, the council said.

Louisiana reported \$318 million in flood losses related to Ike, according to the council.

Tropical Storm Allison, which struck the Houston area in June 2001, held the previous mark for the state's costliest weather catastrophe, with \$3.5 billion in insured losses.

The Associated Press

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