

No. 22-0427

IN THE SUPREME COURT OF TEXAS

TEXAS DEPARTMENT OF INSURANCE AND CASSIE
BROWN, IN HER OFFICIAL CAPACITY AS
COMMISSIONER OF INSURANCE,

Petitioners,

v.

STONEWATER ROOFING, LTD. CO.

Respondents.

**On Petition for Review from the
Seventh Court of Appeals at Amarillo, Texas**

No. 07-21-00016-CV

**BRIEF OF *AMICUS CURIAE*
AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION,
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES,
AND INSURANCE COUNCIL OF TEXAS**

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Identity of Parties and Counsel

The identity of the parties to this appeal and their counsel are correctly set forth in their respective briefs. Amicus curiae are:

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ISSUES PRESENTED

Amicus curiae American Property Casualty Insurance Association (“APCIA”), National Association of Mutual Insurance Companies (“NAMIC”), and Insurance Council of Texas (“ICT”) adopt the “Issues Presented” set forth in the Brief of Petitioners.

ABOUT AMICUS CURIAE
AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION

APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 63 percent of the U.S. property-casualty insurance market and write \$47 billion in total property and casualty insurance premiums in the State of Texas.

On issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits *amicus curiae* briefs in significant cases before federal and state courts, including this Court.

APCIA is one of the three sources of the fee paid for preparing this brief.

ABOUT AMICUS CURIAE
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

NAMIC consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. It supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers. NAMIC member companies write \$391 billion in annual premiums and represent 68 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through

its advocacy programs, NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

NAMIC is one of the three sources of the fee paid for preparing this brief.

ABOUT *AMICUS CURIAE*
INSURANCE COUNCIL OF TEXAS

ICT is the largest non-profit state property and casualty insurance trade association in the United States and represents the interests of over 400 property and casualty member insurers doing business in Texas. As part of its mission, ICT educates consumers and media on property and casualty insurance and related catastrophe awareness. In addition, ICT represents the collective interests of its member companies in rate and policy forms issues, and questions about insurance coverages, claims processes, and industry practices, before the Texas Department of Insurance. ICT's members, although diverse in size, represent over 80 percent of the residential property insurance market in Texas and routinely handle tens of thousands of claims each year for losses to property including coverage for weather related losses and large-scale weather catastrophes. It is important to our members that consumers are protected from deceptive practices and if needed, are able to utilize public adjusters who are licensed and act consistent with existing laws and

requirements for avoiding conflict of interest situations. ICT submits amicus briefs in court cases that are of widespread interest to its members.

ICT is one of the three sources of the fee paid for preparing this brief.

INTEREST OF AMICUS CURIAE APCIA, NAMIC, and ICT

The interest of amicus curiae APCIA, NAMIC, and ICT (collectively “Insurer Trade Groups”) in the outcome of this matter is substantial and direct. Unquestionably, Texas policyholders who may fall victim to unscrupulous contractors and others acting as unlicensed and unregulated claim advocates will be the ones most directly affected by the outcome of this appeal in thousands of Texas property insurance claims each year. In turn, this effect will also be felt by the member companies of the Insurer Trade Groups, who will be forced to contend with the fact that the predictable influx of unlicensed and unregulated contractor claim advocates into the Texas insurance claims process could be so great, and the abuses so significant, that the ordinary property insurance claims process in the Texas insurance marketplace could be significantly disrupted.

Accordingly, the Insurer Trade Groups respectfully submit this *amicus curiae* brief.¹

¹ No party or its counsel authored this brief in whole or in part, or contributed money intended to fund preparing or submitting this brief. No other person contributed money intended to fund preparing or submitting this brief other than the Insurer Trade Groups.

ARGUMENT

The First Amendment arguments at issue in this matter are well briefed by the parties and their respective amicus curiae. The Insurer Trade Groups have nothing to add to the parties' respective thoughtful analyses.

However, the Insurer Trade Groups are concerned that the current briefing does not adequately explain the practical reality of what can be expected to occur if this Court grants the relief sought by Stonewater. Accordingly, the focus of the Insurer Trade Groups in this amicus curiae brief is on informing the Court about the typical Texas insurance claims process and how the outcome of this matter could significantly disrupt this process.

I. The Texas First-Party Insurance Claims Process

Every year, Texas leads the country in hail and other weather-related claim events. The large majority of these claims involve damage to roofs. Some claims are resolved solely between the insurance company and its insured. Other claims involve a roofing contractor with a written agreement to perform the required repair work. And other claims involve a licensed public insurance adjuster, who under Texas law is the legally authorized representative in quantifying and negotiating a settlement of the insured's claim. The following provides additional information concerning the role of roofing contractors and public insurance adjusters in the Texas insurance claims process.

A. Roofing Contractors

Roofing contractors play an important role in the Texas insurance claims process. They execute contracts with policyholders and develop a scope of work and pricing to complete the necessary work. They meet with the insurance company adjuster and explain their scope of work and pricing. They then complete the necessary repair work. A significant percentage of insurance claims are resolved following this cooperative process.

The conduct of Stonewater giving rise to this proceeding is not present in the vast majority of Texas insurance claims. It is rare. Over the past decade, the “unauthorized practice of public adjusting,” referred to in the industry as “UPPA,” has gained some attention. During this time, a few roofing contractors have engaged in conduct similar to Stonewater and crossed the line into acting as a claim advocate attempting to negotiate on behalf of policyholders. When this occurs, the Texas Department of Insurance (“TDI”) can take administrative action against the offending roofing contractors.²

Fortunately, most roofing contractors know and adhere to their proper role in the insurance claims process – because the standards are not vague and are clearly expressed in Texas law that has been in place since 2003. In fact, several years ago

² Representative cease and desist orders issued by the TDI against contractors engaged in improper UPPA are attached at Appendix A.

when UPPA issues first started receiving considerable attention, the North Texas Roofing Contractors Association issued a Bulletin entitled: “**What You Can and CANNOT Do/Say as a Roofer Related to Insurance.**” *See* Appendix B. The Bulletin correctly states the role of a roofing contractor in the claims process. Most Texas contractors have no problem understanding what they can and cannot do in the insurance claims process. The administrative process addresses those who cross the line.³

But the problems with roofing contractors in the insurance claims process go far beyond a few of them engaging in UPPA. Unfortunately, Texas does not license or regulate roofing contractors. Roofing contractors are not required to obtain a license or even register to operate in Texas. Efforts to regulate Texas roofing contractors fail in every Texas legislative session. *See* Dave Lieber, *The Watchdog: Why the Texas roofers’ registration bill died in a hailstorm of ‘no’ votes from both parties*, DENTON RECORD-CHRONICLE (June 9, 2019), https://dentonrc.com/news/the_watchdog/the-watchdog-why-the-texas-roofers-registration-bill-died-in-a-hailstorm-of-no-votes/article_60e4ac37-2062-5d3a-b33f-ad18582cdb07.html. Given the lack of any licensing or regulation, anyone can

³ There can be no disputing that Stonewater crossed the line. At the core of this dispute is a lawsuit brought against Stonewater by one of its clients who contended that their contract was illegal, void, and unenforceable because Stonewater engaged in UPPA. The lawsuit describes the actions of Stonewater in the claims process, telling a concerning story of significant improper conduct. *See* Plaintiff’s Original Petition; *Tyler Cardiovascular Consultants, P.A. v. Stonewater Roofing, LTD, Co., et al*; 86th Judicial District, Kaufman County (Appendix C).

call themselves a roofing contractor in Texas, even the proverbial “two-Chucks-in-a-truck” who drive to Texas from neighboring states after every storm event. Their door hangers and yard signs are everywhere.

As a result of this unregulated environment open to anyone with a hammer and some nails, fraud and other improper conduct are widespread. Every new storm brings media reports of bad roofing contractor conduct. See Charlotte Huffman, ‘*He Scammed My Mom Out of \$10,000*’: Better Business Bureau Says Complaints Against Contractors Are Up, WFAA (Feb. 22, 2021), <https://www.wfaa.com/article/news/local/investigates/texans-ripped-off-bad-good-contractors-repairs-home-renovation/287-cb14f967-9945-47f9-97dd-bcaa2354fd02>; see also Dave Lieber, *The Watchdog: Let’s rein in dishonest contractors*, DALLAS MORNING NEWS (Dec. 31, 2015), <https://www.dallasnews.com/news/watchdog/2016/01/01/watchdog-lets-rein-in-dishonest-contractors/>.⁴

⁴ And here are more: Michelle Homer, *Crooked Contractor Sentenced to 10 Years in Prison for Fraud During Hurricane Harvey*, KHOU 11 NEWS (Feb. 17, 2020), <https://www.khou.com/article/news/crime/crooked-contractor-sentenced-to-10-years-in-prison-for-fraud-during-hurricane-harvey/285-93ae445c-53eb-42b0-b068-e1acff92ed89>; Erin Douglas, *After Dallas Tornado, Beware of Contractor Fraud, Attorney General Warns*, CHRON. (Oct. 21, 2019), <https://www.chron.com/business/bizfeed/article/After-Dallas-tornadoes-beware-of-contractor-14551205.php>; ; Haley Rogers, *Plano, Beware of Roofing Scammers*, PLANO STAR COURIER (Mar. 31, 2016), https://starlocalmedia.com/planocourier/news/plano-beware-of-roofing-scammers/article_3a266c2c-f6b0-11e5-bb6c-a791447f66bb.html; *Shelby County Assessing Storm Damages; Officials Warn Against ‘Fly-By-Night’ Contractors*, KTRE (Mar. 30, 2016), <https://www.ktre.com/story/31594966/shelby-county-assessing-storm-damages-officials->

It is also noteworthy that the concerns are not only with roofing contractors. For example, as the Court is aware, in 2021, Texas experienced a catastrophic freeze event. There were significant problems resulting from contractor conduct in claims arising from that event.⁵

Why are these problems involving improper contractor conduct relevant to the issues before this Court? Because if Stonewater's position is accepted and becomes the law of this state, these unlicensed and unregulated contractors – bound by no licensing requirements, no ethical rules, and no standards of conduct – will be the ones signing-up Texas policyholders to represent them in negotiating their insurance claims with the Insurer Trade Groups member companies while at the same time acting as the contractor making repairs. Even more concerning is the fact that in this role, these unlicensed and unregulated contractors will have direct access to vast

[warn-against-fly-by-night-contractors/](#); Jace Larson, *Houston Homeowner Loses \$10K to Unlicensed Contractors*, KPRC (Mar. 21, 2016), <https://www.click2houston.com/news/2016/03/22/houston-homeowner-loses-10k-to-unlicensed-contractors/>; Domingo Ramirez Jr., *Fort Worth Couple Plead Guilty to Roofing Scam*, FT. WORTH STAR-TELEGRAM, (June 24, 2015) <https://www.star-telegram.com/news/local/fort-worth/article25418851.html>.

⁵ See, e.g., David Furtado, *Watch Out for Roofing Scams Following Hail Storms*, ABC 7 NEWS (May 28, 2021), <https://abc7amarillo.com/news/local/watch-out-for-roofing-scams-following-hail-storms>; Arezow Doost, *Still Dealing with Damage After the Winter Freeze? How to Protect Yourself*, KXAN NEWS (Mar. 7, 2021), <https://www.kxan.com/investigations/still-dealing-with-damage-after-the-winter-freeze-how-to-protect-yourself/>.

sums of insurance claim payments – an ominous posture for the insurance marketplace given the strong lure of financial self-interest.⁶

This is a significant concern to the Insurance Trade Groups and their member companies.

B. Public Insurance Adjusters

A public insurance adjuster is a legally recognized advocate for the policyholder.⁷ Texas insurance companies regularly work cooperatively with public insurance adjusters to bring an amicable and prompt resolution to claims. At times there are disagreements between insurance companies and public insurance adjusters as to the actual scope of damage and cost to repair. But as licensed and regulated

⁶ One particular scam is very instructive as to what can be expected if anyone is allowed to handle insurance claims on behalf of Texas homeowners. In approximately 2015, Dallas-Fort Worth area roofing contractor House of Tomorrow began knocking on doors advising that they could help homeowners file insurance claims and get a new roof. House of Tomorrow submitted the insurance claims on behalf of the homeowners and collected the insurance claim payment checks. Unfortunately, they never performed the roof replacement work. Over 100 homeowners collectively lost over \$400,000 in this scam. Despite years of litigation that resulted in a substantial judgment, none of the homeowners ever saw a penny of their money. See Dave Lieber, *The Watchdog: Worst Roofing Scheme in Dallas-Fort Worth Takes Homeowners' Insurance, Doesn't Deliver New Roofs*, DALLAS MORNING NEWS, (Feb. 17, 2017), <https://www.dallasnews.com/news/watchdog/2017/02/17/worst-roofing-scheme-in-dallas-fort-worth-takes-homeowners-insurance-doesn-t-deliver-new-roofs/>

⁷ There are now 46 states that regulate public insurance adjusters. Texas was an early state to recognize concerns about public insurance adjusters engaging in the unauthorized practice of law, while acknowledging the need for licensed professionals to assist insureds in the negotiation and adjusting of property damage claims. Public insurance adjuster licensing strikes that balance. A recent article demonstrates the need for this type of licensure and regulation. See *More States Adopting Professional Standards for Public Adjusters*, *Claims Journal*, (May 15, 2023), <https://www.claimsjournal.com/news/national/2023/05/15/316961.htm#:~:text=Back%20then%2C%20Goodman%20said%2C%20only,more%20controls%20on%20public%20adjusters>

professionals, most Texas public insurance adjusters acknowledge and respect their fiduciary role in being able to act as a "claim advocate" for Texas policyholders.⁸ They generally behave professionally and responsibly in the insurance claims process.

Amicus Curiae Texas Association of Public Insurance Adjusters ("TAPIA") provides a detailed history of how Texas public insurance adjusters became recognized claim advocates subject to regulation and licensing. Most important to this history is the fact that prior to the 2003 enactment of the public adjuster licensing statute set forth at Chapter 4102 of the Texas Insurance Code, public adjusting was considered to be the unauthorized practice of law (*see* case law cited at TAPIA amicus brief, pg. 4, f. 7). Prior to 2003, individuals acting at that time as unregulated public insurance adjusters faced administrative action for engaging in the unauthorized practice of law.

Since the enactment of Chapter 4102 in 2003, public insurance adjusters have enjoyed a narrow carve-out from the regulations concerning the unauthorized practice of law. This carve-out has allowed licensed public insurance adjusters to represent Texas policyholders in the insurance claims process, conduct that

⁸ This is not to say that the public insurance adjusting profession is entirely devoid of any problems or improper conduct. When such issues arose in the past, the Insurer Trade Groups and TAPIA worked cooperatively to pass legislation addressing abuses in the Texas public insurance adjuster profession or to address improper conduct by certain individual public insurance adjusters. The Insurer Trade Groups value this cooperative relationship for the benefit of all parties involved in the insurance claims process.

otherwise would be considered the practice of law. Without the enactment of Chapter 4102, any public insurance adjuster representing policyholders in the Texas insurance claims process would be engaged in what has been found to constitute the unauthorized practice of law.

This fact is vitally important in considering the effect of the Court’s decision in this matter.

II. Relief Sought by Stonewater

Stonewater is clear in the relief it seeks in this matter. Its Original Petition states:

PRAYER

For these reasons, Plaintiff asks that the Court issue a citation for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants for the following:

1. A declaratory judgment, pursuant to TEX. CIV. PRAC. & REM. CODE § 37.004(a), that TEX. INS. CODE sections 4102.051(a) and 4102.163 violate the United States Constitution, including but not limited to the First and Fourteenth Amendments, and are therefore void and unenforceable.
2. Reasonable and necessary attorney’s fees and costs pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009.
3. Any other relief that the Court deems just and proper.

Plaintiff’s Original Petition, Cause No. D-1-GN-20-003172; June 15, 2020.

Stonewater plainly seeks a declaration that two key sections of Chapter 4102 are “void and unenforceable.” The first, Section 4102.051(a), states: “A person may not act as a public insurance adjuster in this state or hold himself or herself out to be a public insurance adjuster in this state unless the person holds a license issued by

the commissioner under Section 4102.053 or 4102.054.” The second, Section 4102.163, states: “A contractor may not act as a public adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide contracting services, regardless of whether the contractor: (1) holds a license under this chapter; or (2) is authorized to act on behalf of the insured under a power of attorney or other agreement.”

Based on its Original Petition, Stonewater seeks a declaration that (i) the key statutory provision requiring a license to act as a public insurance adjuster is void and unenforceable, and (ii) a contractor may act as an unlicensed public insurance adjuster on the same property on which it is performing repairs.

Stated differently, if Stonewater gets the relief it seeks, anyone – literally anyone – would be able to act on behalf of Texas policyholders in negotiating insurance claims and do so even when they are performing the repair work. Prior to 2003, such conduct was repeatedly found to be the unauthorized practice of law and still today is the unauthorized practice of law for anyone not licensed as a public insurance adjuster.⁹

⁹ This raises the interesting question of whether, should Stonewater be granted the relief it seeks, the conduct in negotiating insurance claims would still be considered the practice of law, as it was prior to 2003 and arguably is today for anyone not holding a public insurance adjuster license. If Stonewater obtains the relief it seeks in this matter, both years of litigation in Texas courts and administrative proceedings before the State Bar of Texas can be expected to address this issue, during which time Texas insurance consumers and insurance companies will face a barrage of unregulated contractor involvement in the insurance claims process.

Obviously, Stonewater’s real intent with this lawsuit is to continue its practice of effectively acting as a public insurance adjuster in its roofing projects. Under Section 4102.001(3) a “public insurance adjuster” is defined as “a person who, for direct, indirect, or any other compensation...acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property.” This is exactly what Stonewater did in the underlying lawsuit arising from one of its roofing projects. Stonewater now asks this Court to sanction its conduct moving forward, despite decades of common law and legislation directed at keeping unlicensed and unregulated individuals out of the Texas insurance claims process.

III. Current Stability of Texas Insurance Market

There is no shortage of recent press discussing instability in state insurance marketplaces due to climate risk and other factors. One example is Florida, which is under considerable pressure and recently enacted significant reforms to address abusive conduct in the claims process and resulting litigation. *See Florida’s Property Insurance Marketplace Has Been Redefined*, <https://www.insurancebusinessmag.com/us/news/breaking-news/floridas-property-insurance-marketplace-has-been-redefined--demotech-437127.aspx>

Significantly, one of the central components of Florida’s legislation addressed abuses by contractors. The legislation eliminated the practice of allowing a

contractor to take an “assignment of benefits,” also referred to as “AOB,” which basically assigned all claim rights to the contractor performing the repair work. The involvement of contractors in the claim process was viewed by the Florida legislature as a factor driving the Florida insurance crisis.¹⁰

Florida is not alone. Louisiana, California, and Colorado are all states experiencing an insurance availability and affordability crisis.¹¹

Fortunately, Texas is not one of the states presently considered at risk of an insurance crisis. Just last week, an article entitled “*Texas homeowners’ market under pressure but unlikely to be ‘next California’*” discussed the current state of the Texas insurance marketplace.¹² The article specifically mentions “Texas’s quick-to-react legislature as another factor insulating insurers from market meltdowns.” Some of these legislative fixes are exactly what Stonewater now seeks to undo in this matter,

¹⁰ Texas has never recognized contractor assignments of benefits. See *Insurance Benefit Assignment To Contractors: Not In Texas*, <https://www.jdsupra.com/legalnews/insurance-benefit-assignment-to-66840/>,

¹¹ See Louisiana - *Louisiana Insurance Market Is In Crisis, New Head Says Less Regulation Is The Answer*; <https://www.wvno.org/2023-09-06/louisianas-insurance-market-is-in-crisis-new-head-says-less-regulation-is-the-answer> (WWNO Radio Sept. 6, 2023); California - *Can this plan fix California’s insurance crisis? What you need to know*, https://www.bakersfield.com/news/business/can-this-plan-fix-california-s-insurance-crisis-what-you-need-to-know/article_d98c5036-5c03-11ee-b385-9f7346c1b799.html, (Bakersfield.com; Sept. 25, 2023); Colorado - *The home and auto insurance crisis and how to keep your coverage*, <https://www.fox21news.com/news/national/the-home-and-auto-insurance-crisis-and-how-to-keep-your-coverage/>, (Fox21news.com, Oct. 1, 2023).

¹² See *Texas homeowners’ market under pressure but unlikely to be ‘next California’*, (inside P&C, Oct. 17, 2023) (See Appendix D).

including Section 4102.163 as passed by the Texas legislature in 2013 and amended by the Texas legislature in 2019.

Along with all Texas insurance consumers, the Insurer Trade Groups have a strong interest in ensuring the continued stability and viability of the Texas insurance marketplace. Any considerable disruption of that marketplace could place Texas in the same situation presently faced by other states experiencing catastrophic weather events.

IV. The Future

If Stonewater's position is accepted by this Court, the Texas insurance marketplace could soon join other states in experiencing an insurance crisis. Again, the significance of what Stonewater is asking this Court to hold cannot be overstated. Stonewater's position is that the Texas statute allowing only licensed public insurance adjusters to negotiate insurance claims on behalf of Texas policyholders should be declared void and unenforceable. This means that anyone, not just contractors but literally anyone, will be able to represent Texas home and business owners in their insurance claims. Anyone can sign up a Texas policyholder to be their claims advocate, negotiate the insurance claim, collect the insurance proceeds, and, if they are also a contractor, perform the repair work.

If this happens, the stability of the Texas insurance marketplace could be severely undermined. The mad dash to Texas will be on. Word will spread quickly

across the country: “*Did you hear that Texas got rid of their licensing requirement to be a public adjuster and that contractors can both negotiate claims and perform the work?*” Policyholders would be subjected to an endless parade of unregulated contractors desiring to act as their claim advocates. When retained, these contractor claim advocates will predictably seek to maximize profits as they negotiate their own roofing projects with the Insurer Trade Groups member companies, often ignoring the fact that the policyholder simply wants their roof damage fixed. Disputed claims are certain to increase given the contractor claim advocate’s clear conflict of interest, which of course will lead to an increase in litigation. The current stability of the Texas insurance marketplace could be threatened.

Frankly, this scenario is unfathomable to the Insurer Trade Groups. With no barrier to entry in becoming a contractor claim advocate, the abuses and fraud currently occurring in the Texas insurance claims process will seem mild compared to what is coming. Stonewater’s conduct in this matter, which as stated above is now relatively rare in the Texas insurance claims process, will become commonplace as countless contractors, and others, will seek to replicate their contractor claim advocate model. Conduct that for decades was considered to be the practice of law and reserved solely to lawyers, and more recently narrowly opened only to licensed public insurance adjusters, will now be open to anyone and everyone. No license

required. No regulations to deal with. No ethical rules to consider. No fiduciary obligations to protect consumers. No trust accounts to safeguard insurance proceeds.

If this comes to be, the future of the Texas property insurance claims process is very predictable. And very concerning.¹³ Contractor claim advocates will essentially take over a significant segment of the Texas property insurance claims process, exactly the situation that led to the insurance crisis in Florida.

Imagine allowing anyone in Texas to be a lawyer, regardless of education or licensing. The relief Stonewater seeks in this matter is essentially the equivalent, opening up to all-comers an area historically considered to be the practice of law.

That is very concerning to the Texas Insurance Trade groups and their member companies.

PRAYER

For the foregoing reasons, the Insurer Trade Groups urge the Court to reverse the court of appeals' judgment denying Rule 91a relief and render judgment dismissing Stonewater's petition in its entirety.

¹³ Interestingly, not only did the two largest Texas roofing contractor trade organizations (Roofing Contractors Association of Texas and North Texas Roofing Contractors Association) not file amicus curiae briefs in support of Stonewater's position, neither did any of the other organizations that typically support policyholder rights in insurance related issues. This includes Texas Watch, Texas Trial Lawyers Association, and United Policyholders. Moreover, the Texas public insurance adjuster trade organization (TAPIA) filed an amicus brief opposing Stonewater's position. This certainly suggests that no one in the insurance claims community acting on behalf of Texas policyholders supports the radical relief that Stonewater seeks in this matter.

Respectfully submitted:

By: /s/ Steven J. Badger

Steven J. Badger

State Bar No. 01499050

sbadger@zellelaw.com

ZELLE LLP

901 Main Street, Suite 4000

Dallas, TX 75202

Telephone: 214-742-3000

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Texas Rule of Appellate Procedure 9.4(i)(2)(B) because it contains 4809 words, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

2. This brief complies with the typeface requirements of Texas Rule of Procedure 9.4(e) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font.

/s/ Steven J. Badger

Steven J. Badger

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded via electronic filing on October 24, 2023, to the following counsel of record:

<p>Michael A. McCabe State Bar No. 24007628 mmccabe@munckwilson.com Chase A. Cobern State Bar No. 24101633 ccobern@munckwilson.com MUNCK WILSON MANDALA, LLP 600 Banner Place Tower 12770 Coit Road, Suite 600 Dallas, Texas 75251 Tel: (972) 628-3600 Fax: (972) 628-3616</p> <p>And counsel for all amicus curiae.</p>	<p>Evan S. Greene State Bar No. 24068742 Evan.Greene@oag.texas.gov H. Melissa Mather Assistant Attorney General State Bar No. 24010216 melissa.mather@oag.texas.gov Office of the Attorney General P.O. Box 12548 (MC 059) Austin, Texas 78711-2548 Tel: (512) 936-1700 Fax: (512) 474-2697</p>
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/s/ Steven J. Badger
Steven J. Badger

Appendix

- A. *“What You Can and CANNOT Do/Say as a Roofer Related to Insurance”*
North Texas Roofing Contractors Association
- B. Texas Department of Insurance; Official Orders of the Texas Commissioner of Insurance -- Representative Cease and Desist Orders
- C. Plaintiff’s Original Petition; *Tyler Cardiovascular Consultants, P.A. v. Stonewater Roofing, LTD, Co., et al*; 86th Judicial District, Kaufman County
- D. *Texas homeowners’ market under pressure but unlikely to be ‘next California’*, (inside P&C, Oct. 17, 2023)

Exhibit A

Exhibit A-1

No. 2020-6381

**Official Order
of the
Texas Commissioner of Insurance**

Date: 06/29/2020

Subjects Considered:

Elite Home Solutions Inc.
5100 Eldorado Pkwy #102-526
McKinney, Texas 75070

Kirk Buchanan
5100 Eldorado Pkwy #102-526
McKinney, Texas 75070

Consent Order
TDI Enforcement File Nos. 17437 & 22311

General remarks and official action taken:

This is a consent order with Elite Home Solutions Inc. (Elite) and Kirk Buchanan (Buchanan), collectively Respondents. The department alleges that Elite, a roofing company, and Buchanan, the company's owner, acted and/or advertised as a public insurance adjuster without a license. Respondents have agreed to cease and desist from performing the acts of a public insurance adjuster or otherwise engaging in acts that constitute the business of insurance in Texas. Respondents further agree to pay, jointly and severally, a \$6,000 administrative penalty.

Waiver

Respondents acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Respondents waive all of those rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

2020-6381

Commissioner's Order
Elite Home Solutions Inc.
Kirk Buchanan
Page 2 of 8

Pursuant to Tex. Ins. Code § 82.055(b), Respondents do not admit to a violation of any provision of the Texas Insurance Code or a rule of the department. Respondents further maintain that the existence of a violation is in dispute. However, for the purposes of settlement, Respondents have agreed to this order.

Findings of Fact

Roofing and Construction Contractor

1. Elite is a roofing and construction business owned by Buchanan and located at 5100 Eldorado Pkwy #102-526, McKinney, Texas 75070.
2. Neither Elite, Buchanan, nor any employee of Elite hold a public insurance adjuster license.

Unauthorized Practice of Public Insurance Adjusting

3. On or about March 12, 2018, the department received a complaint alleging Respondents engaged in the unauthorized practice of public insurance adjusting.
4. Elite used language describing the acts of a public insurance adjuster on the company's website, including the following:
 - a. "The insurance claims specialists at Elite Home Solutions are highly trained and capable of ensuring your insurance company provides you with a full and fair damage assessment.
 - b. "We will ensure you obtain the money you deserve to have your restoration completed properly."
 - c. "Elite Home Solutions offers complete and comprehensive help from start to finish in working with you and your insurance company to help you quickly and easily recover the full amount due to you and complete all repairs."
 - d. "This allows us to track and document every step of the claims process ensuring you, the property owner, the best possible service and settlement."
 - e. "We walk you through two simple steps on exactly how to file your claim."

2020-6381

Commissioner's Order
Elite Home Solutions Inc.
Kirk Buchanan
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- f. "We serve as your representative to ensure that all damage is identified and included in the claim."
- g. "Throughout the entire claims process, we stay in constant communication with your insurance company. We submit all of the documents to the Insurance Company for you, and handle all of the communication from requesting a claim number to submitting the final certified invoice."
- h. ". . . we will submit an itemized supplement with documentation to the insurance company for you, so you will be paid for any and all extra costs. After the completion of all repairs and you are 100% satisfied, we will submit a certified invoice to the insurance company in order for you to receive your full settlement."
- i. "The purpose of home owner's insurance is to protect homeowners against losses in their property's value due to damage that is beyond their control."
- j. "Your insurance company will compensate you for your loss and replace your roof."
- k. "If you have legitimate damage, you're entitled to a re-inspection once you choose a contractor who is willing to work with your insurance company."
- l. "The best results for the benefit of the homeowner seem to be obtained when an experienced roofer walks through the inspection with the insurance adjuster and calls to the adjuster's attention any damage that he sees. It's always best to have a professional roofer present at the time of the adjuster's inspection. Most professional roofers should have the homeowners best interest at heart."
- m. ". . . most insurance companies have a statute of limitations and many give you less than a year to file."
- n. "If your roof has any damage what-so-ever you have a VALID insurance claim and should file with your insurance company. Insurance companies can not raise rates or cancel your policy for a weather related claim. It is illegal for them to do so."

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Commissioner's Order
Elite Home Solutions Inc.
Kirk Buchanan
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5. Respondents admit to the use of improper language, but maintain that in practice, neither the company nor its employees, performed the acts of a public insurance adjuster.
6. Respondents cooperated with the department and removed all language referencing the unauthorized practice of public insurance adjusting from their website.
7. Respondents agree to comply with all insurance laws in the future.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 101.101-101.156, and Ch. 4102.
2. The commissioner has authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056, TEX. INS. CODE § 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Respondents have knowingly and voluntarily waived all procedural rights to which they may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Respondents engaged in the unauthorized practice of public insurance adjusting, as contemplated by TEX. INS. CODE § 4102.001(3)(A)(i) when they acted on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property, in violation of TEX. INS. CODE § 4102.051.
5. Respondents engaged in the unauthorized practice of public insurance adjusting, as contemplated by TEX. INS. CODE § 4102.001(3)(B) when they advertised, solicited business, or held themselves out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property, in violation of TEX. INS. CODE § 4102.051.
6. Respondents violated TEX. INS. CODE § 4102.163(a) by acting as a public insurance adjuster or advertising to adjust claims for any property for which the contractor is providing or may provide roofing services, regardless of whether the contractor holds a license.

2020-6381

Commissioner's Order
Elite Home Solutions Inc.
Kirk Buchanan
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Order

It is ordered that Elite Home Solutions Inc. and Kirk Buchanan must cease and desist immediately and in perpetuity from:

- a. performing the acts of a public insurance adjuster or otherwise engaging in acts that constitute the business of insurance in Texas;
- b. making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or by electronic means, on the internet, in an email or via social media, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to performing the acts of public insurance adjuster, which is untrue, deceptive, or misleading;
- c. using language in advertisements and/or business forms describing the acts of a public insurance adjuster or any activities related to conducting the unauthorized practice of public insurance adjusting or the business of insurance in Texas.

It is further ordered that Elite Home Solutions Inc. and Kirk Buchanan must pay, jointly and severally, an administrative penalty of \$6,000 within 30 days of the date of this order. The penalty must be paid by cashier's check or money order made payable to the "State of Texas" and sent to the Texas Department of Insurance, Attn: Enforcement Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

Kent C. Sullivan
Commissioner of Insurance

By:  _____
Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528


2020-6381

Commissioner's Order
Elite Home Solutions Inc.
Kirk Buchanan
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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Stephanie Andrews, Staff Attorney
Enforcement Division

Approved as to form and content:



Brian Benitez
Counsel for Respondents

Affidavit

STATE OF TEXAS

§

§

COUNTY OF COLLIN

§

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed of the following:

"My name is Kirk Buchanan, owner of Elite Home Solutions Inc. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I waive rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner.

I have knowingly and voluntarily entered into this consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the State of Texas."

Kirk Buchanan

Affiant

SWORN TO AND SUBSCRIBED before me on this 12 day of May, 2020.

(NOTARY STAMP)

Khursheed Zehra
Signature of Notary of Public

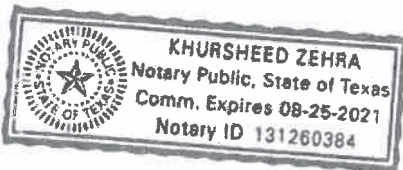


Exhibit A-2

No. 2018- 5517

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: MAY 24 2018

Subject Considered:

A-AFFORDABLE ROOFING CO.
1600 Meadow Lane
Alvin, Texas 77511

CONSENT CEASE AND DESIST ORDER
TDI ENFORCEMENT FILE NO. 12163

General remarks and official action taken:

The subject of this order is whether a cease and desist order should be issued against A-Affordable Roofing Co. (A-Affordable).

WAIVER

A-Affordable acknowledges that the Texas Insurance Code and other applicable law provide certain rights. A-Affordable waives all of these rights in consideration of the entry of this consent order.

FINDINGS OF FACT

Roofing Contractor

1. A-Affordable is a roofing contractor business owned by Ed Rickert (Rickert) and located at 1600 Meadow Lane, Alvin, Texas 77511.
2. Neither A-Affordable nor Rickert or any employees of A-Affordable hold a public insurance adjuster license or any other license issued by the Texas Department of Insurance.

Unauthorized Practice of Public Insurance Adjusting

3. On June 8, 2016, the department received a complaint alleging A-Affordable engaged in the unauthorized practice of public insurance adjusting.

4. A-Affordable included language describing the acts of a public insurance adjuster in the company's proposal and contract, and business card, including the following:
 - a. A-Affordable's proposal and contract stated: "I hereby authorize A-Affordable to negotiate directly with my insurance company for all property damage repairs at the above address and to act as my agent to negotiate a property damage claim settlement."
 - b. A-Affordable's business card stated: "We work with your insurance company to get you every dime you are owed."
5. A-Affordable admits to the use of the improper language in its proposal and contract, and business card, but denies performing the acts of a public insurance adjuster in practice.
6. Upon notification by the department, A-Affordable cooperated with the department. On March 29, 2017, the department confirmed that A-Affordable removed all language referencing the unauthorized practice of public insurance adjusting from its materials. A-Affordable agrees to comply with all insurance laws in the future.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 101.101-101.156, and Ch. 4102.
2. TEX. GOV'T CODE § 2001.056, TEX. INS. CODE §§ 82.055, and 28 TEX. ADMIN. CODE § 1.47 give the commissioner authority to dispose of this case informally.
3. A-Affordable engaged in the unauthorized practice of public insurance adjusting, in violation of TEX. INS. CODE § 4102.051 when A-Affordable:
 - a. acted on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property, as contemplated by TEX. INS. CODE § 4102.001(3)(A)(i); and
 - b. advertised, solicited business, or held itself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property, as contemplated by TEX. INS. CODE § 4102.001(3)(B).


It is ordered that A-Affordable Roofing Company must cease and desist immediately and in perpetuity from:

- a. performing the acts of a public insurance adjuster or otherwise engaging in acts that constitute the business of insurance in Texas;
- b. making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the

form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or by electronic means, on the internet, in an email or via social media, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to performing the acts of public insurance adjuster, which is untrue, deceptive, or misleading; and

- c. using language in advertisements and/or business forms describing the acts of a public insurance adjuster or any activities related to conducting the unauthorized practice of public insurance adjusting or the business of insurance in Texas.

It is further ordered that A-Affordable Roofing Company must pay an administrative penalty of \$2,000 within 30 days of the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Kent C. Sullivan
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



LaKisha T. Seldon McKay
Staff Attorney
Enforcement Section

Exhibit A-3

No. 2018- 5505

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: MAY 23 2018

Subject Considered:

CSI RENOVATIONS, LLC
6707 Rufe Snow Dr, Ste. 20
Watauga, Texas 76148-2337

CONSENT CEASE AND DESIST ORDER
TDI ENFORCEMENT FILE NO. 12066

General remarks and official action taken:

The subject of this order is whether a cease and desist order should be issued against CSI Renovations, LLC (CSI).

WAIVER

CSI acknowledges that the Texas Insurance Code and other applicable law provide certain rights. CSI waives all of these rights in consideration of the entry of this consent order.

FINDINGS OF FACT

Roofing Contractor

1. CSI is a roofing and renovations contractor business owned by Chris Irving (Irving) and located at 6707 Rufe Snow Dr., Ste. 20, Watauga, Texas 76148-2337.
2. Neither CSI nor Irving or any employees of CSI hold a public insurance adjuster license or any other license issued by the Texas Department of Insurance.

Unauthorized Practice of Public Insurance Adjusting

3. On September 9, 2017, the department received a complaint alleging CSI engaged in the unauthorized practice of public insurance adjusting.
4. CSI included language describing the acts of a public insurance adjuster in the company's marketing brochure, website, damage report document, and insurance work authorization form, including the following:

- a. CSI's marketing brochure stated: "Need help with an Insurance Claim? We will document your roof damage and contact your insurance company for you."
 - b. CSI's website, www.csiroofers.com, stated: "Roofing Insurance Claim Specialists in Fort Worth."
 - c. CSI's damage report document stated: "CSI Renovations, LLC hereby agrees to act as the Insured's advocate with the insurance company to help determine fair market replacement value for all losses incurred in claim."
 - d. CSI's insurance work authorization form stated: "I hereby authorize CSI Renovations LLC to negotiate directly with my insurance company for repairs at the above address and negotiate property damage claim settlement."
5. CSI admits to the use of the improper language, but denies performing the acts of a public insurance adjuster in practice.
 6. Upon notification by the department, CSI cooperated with the department. On January 25, 2017, the department confirmed that CSI removed all language referencing the unauthorized practice of public insurance adjusting from its marketing brochure, website, damage report document, and insurance work authorization form. CSI agrees to comply with all insurance laws in the future.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 101.101-101.156, and Ch. 4102.
2. TEX. GOV'T CODE § 2001.056, TEX. INS. CODE §§ 82.055, and 28 TEX. ADMIN. CODE § 1.47 give the commissioner authority to dispose of this case informally.
3. CSI engaged in the unauthorized practice of public insurance adjusting, in violation of TEX. INS. CODE § 4102.051 when CSI:
 - a. acted on behalf of the insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property, as contemplated by TEX. INS. CODE § 4102.001(3)(A)(i); and
 - b. advertised, solicited business, or held itself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property, as contemplated by TEX. INS. CODE § 4102.001(3)(B).

It is ordered that CSI must cease and desist immediately and in perpetuity from:

- a. performing the acts of a public insurance adjuster or otherwise engaging in acts that constitute the business of insurance in Texas;

- b. making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or by electronic means, on the internet, in an email or via social media, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to performing the acts of public insurance adjuster, which is untrue, deceptive, or misleading; and
- c. using language in advertisements and/or business forms describing the acts of a public insurance adjuster or any activities related to conducting the unauthorized practice of public insurance adjusting or the business of insurance in Texas.

It is further ordered that CSI Renovations, LLC must pay an administrative penalty of \$2,000 within 30 days of the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Kent C. Sullivan
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



LaKisha T. Seldon McKay
Staff Attorney
Enforcement Section

Exhibit B



What You Can and CANNOT Do/Say as a Roofer Related to Insurance

*Texas law **does not allow** a roofing contractor to act as a public insurance adjuster without a license, or advertise to adjust or advertise to adjust claims for any property for which the contractor is providing or may provide roofing services.*

Roofing Contractor Marketing Materials

(website, contract, social media, brochures, flyers, signage, etc)

DO (o.k. to say)

- You are storm restoration experts
- You are roofing experts
- You are Xactimate experts
- List your various certifications, memberships and, if applicable, that you are licensed through RCAT

DON'T

- Don't say you are insurance experts
- Don't say you are experienced in dealing with insurance adjusters or in helping clients with the insurance claims process (this statement opens the door for claims of promising public adjusting services)
- Don't say you'll work with the insured's insurance adjuster, especially in relation to ensuring their repairs are covered
- Don't say you have licensed public adjusters on staff (even if you do – it's an optics issue)
- Don't list your public insurance adjuster's license on any materials, including business cards and contracts. In fact, TDI is cross-checking roofer names with public insurance adjuster licenses, so better not to even have a current license.
- Don't – to the extent possible – allow your customers/clients to post reviews that talk about how you helped them negotiate, settle with, or otherwise deal with their insurance company adjuster

When Speaking with the Insured's Insurance Adjuster

YOU CAN

- Show the areas of damage and explain why you believe the damage is the result of hail, wind, storm, etc.
- Explain and answer questions regarding the scope of your suggested repairs and why each item of repair is necessary
- Identify additional items of work required due to code upgrades
- Answer questions regarding how the work was priced
- Explain your policy of charging OH&P on all work included in your bid

YOU CANNOT

- Discuss what the insured's policy may or may not, or should or should not, cover
- Insist that the insurance adjuster authorize any particular item(s) of work be included in the repair
- Engage in any discussions with the adjuster about why they have an obligation to pay for OH&P or any other items in your bid
- "Agree" with the adjuster on some form of modification to your scope
- "Agree" with the adjuster on some form of modification to your pricing

A special thank you to NTRCA member Karen Ensley for the above information and advice. If you have any questions or have a client whose claim has been underpaid or unfairly denied, you can contact Karen at 817.538.6894 or your own attorney.

Exhibit C

CAUSE NO. 102934-86

TYLER CARDIOVASCULAR CONSULTANTS, P.A.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	86TH JUDICIAL DISTRICT
	§	
STONEWATER ROOFING, LTD, CO., AXIOM PUBLIC ADJUSTING, L.L.C., RAYMOND C. CHOATE, and ROLAND BROWNE, III,	§	
	§	
Defendants.	§	KAUFMAN COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Tyler Cardiovascular Consultants, P.A., Plaintiff herein, and files this its Second Amended Original Petition complaining of Stonewater Roofing, Ltd., Co., Roland Browne III, Axiom Public Adjusting, L.L.C., and Raymond C. Choate. In support of this action, Plaintiff would respectfully show the Court as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190.1, Plaintiff intends to conduct discovery under Level 3.

RULE 47 CLAIM FOR RELIEF STATEMENT

2. Pursuant to Texas Rule of Civil Procedure 47(c)(5), Plaintiff states that, at this time, it seeks monetary relief over \$1,000,000.00.

PARTIES

3. Plaintiff Tyler Cardiovascular Consultants, P.A. is a professional association, formed and existing under the laws of Texas, having its principal place of business located at 2401 SSE Loop 323, Tyler, Texas 75701.

4. Defendant Stonewater Roofing, Ltd., Co. (“**Stonewater**”) is a limited liability company, formed and existing under the laws of the State of Texas. Stonewater has been served and has filed an answer in this case.

5. Defendant Roland Browne III (“**Browne**”) is an individual residing in Smith County, Texas who may be served at his residential address, 434 S. Bois D Arc Avenue, Tyler, Texas 75702.

6. Defendant Axiom Public Adjusting, L.L.C. (“**Axiom**”) is a limited liability company, formed and existing under the laws of the State of Texas. Axiom’s principal office is located in Kaufman County. Through its counsel, Axiom has accepted service and filed an answer in this case.

7. Defendant Raymond C. Choate (“**Choate**”) is an individual who resides in Kaufman County, at 13197 Avant Ln, Scurry, Texas, 75158. Through his counsel, Choate has accepted service and has filed an answer in this case. At all times material herein, Choate was acting in the course and scope of his employment for Axiom. According, references to “Choate” shall mean and refer to both Choate and Axiom.

JURISDICTION

8. This Court has jurisdiction over this action because the matter in controversy exceeds the sum or value of the minimum jurisdictional limits of this Court, exclusive of costs and interest.

VENUE

9. Venue is proper in Kaufman County, Texas, pursuant to Texas Civil Practice & Remedies Code § 15.002(a)(2), (a)(3), as Kaufman County is the county of Axiom’s principal office and Choate’s residence.

**LAW RELEVANT TO
STONEWATER'S CONDUCT**

10. Chapter 101 of the Texas Insurance Code (“**Ch. 101**”) has long prohibited individuals and entities from engaging in the unauthorized “business of insurance.” See Tex. Ins. Code §101.102 (“Unauthorized Insurance Prohibited”); see *id.* at § 101.101 (defining “person”). Specifically, Ch. 101 provides that “[a] person ... may not directly or indirectly do an act that constitutes the **business of insurance** under this chapter **except as authorized by statute.**” Tex. Ins. Code § 101.102 (emphasis added). The “business of insurance” that a “person” must be “authorized by statute” to perform includes the following:

- (6) directly or indirectly acting as an agent for or otherwise representing or assisting [a] person in:
 - (G) investigating or adjusting a claim or loss;
 - (H) transacting a matter after the effectuation of the contract that arises out of the contract; or
 - (I) representing or assisting [a] person in any other manner in the transaction of insurance with respect to a subject of insurance that is resident, located, or to be performed in this state;
- ...
- (8) doing any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance;
- (9) doing or proposing to do any insurance business that is in substance equivalent to conduct described by Subdivisions (1)-(8) in a manner designed to evade statutes relating to insurance[.]”

Tex. Ins. Code § 101.051(b)(6), (8), (9) (emphasis added).

11. Additionally, in 2003, the Texas Legislature passed SB 127, an Act addressing Public Insurance Adjusters (“**PIA**”). See Former Tex. Rev. Civ. Stat. art. 21.07-5, now codified Tex. Ins. Code Ch. 4102, *et seq.* (hereinafter “Ch. 4102”).

12. Ch. 4012 constitutes the sole statutory authority for a “person” who is **not** a licensed Texas attorney to engage in the “business of insurance” by assisting insureds in handling their insurance claims. See Tex. Ins. Code § 4102.002 (2) (exempting “an attorney engaged in the performance of the attorney’s professional duties” from Ch. 4102’s requirements); cf. *id.* at § 4102.003 (“This chapter may not be construed as entitling a person who is not licensed by the Supreme Court of Texas to practice law in this state.”).

13. Persons who aren’t licensed either as an attorney or PIA but who engage in the “business of insurance” by assisting insureds in handling their insurance claims violate both Ch. 101 and Ch. 4102. See, e.g., Commissioner Order No. 06-0492 (Texas Department of Insurance May 15, 2006) (imposing sanctions on roofing company and its owner, explaining that they “engaged in the unauthorized business of insurance by acting as a public insurance adjuster without a license, as contemplated by Tex. Ins. Code Ann. § 101.102 and Tex. Ins. Code Ann. Ch. 4102.”).

14. The claims-handling conduct prohibited by Ch. 101 and Ch. 4102 also constitutes the unauthorized practice of law in violation of Texas Government Code § 81.102. See, e.g., *Green v. Unauthorized Practice of Law Comm.*, 883 S.W.2d 293, 298 (Tex. App.—Dallas 1994, no writ) (pre-Ch. 4102 case upholding permanent injunction against person “doing business as a public adjuster,” explaining, in part, “[e]ven if we accept Green’s contention that he merely acted as a ‘go-between’ and asked only for the damages requested by his clients, Green nevertheless impliedly advised his clients that the requested damages were the only damages to which they were entitled.”); *Brown v. Unauthorized Practice of Law Comm.*, 742 S.W.2d 34, 41 (Tex. App.—Dallas 1987, writ denied); Tex. Gov’t Code Ann. § 81.101(a).

15. Pertinent to Stonewater’s conduct here, the problem that led to the passage of Ch. 4102 in 2003 was described in the statute’s legislative history, in part, as follows:

[SB] 127 would eliminate conflicts of interest by preventing remediators or building contractors from acting as public adjusters. **Consumers have been subjected to a variety of scams by unlicensed adjusters who offer to pay their living expenses or to adjust a claim for free if the consumer agrees to use the adjuster’s contracting firm to make the repairs.** Legitimate public adjusters are not contractors, mold remediators, roofers, or plumbers, and they should not represent themselves to be such.

House Research Organization, Bill Analysis, Tex. S.B. 127, 78th Leg. at 7 (emphasis added).

16. Under Ch. 4102, a PIA includes “a person [including a company] who, for direct, indirect, or any other compensation: (i) acts on behalf of an insured in **negotiating for or effecting the settlement of a claim** or claims for loss or damage under any policy of insurance covering real or personal property” **or** “a person who **advertises, solicits business, or holds himself or herself out** to the public **as an adjuster of claims** for loss or damage under any policy of insurance covering real or personal property.” Tex. Ins. Code § 4102.001(3)(A), (3)(B) (emphasis added).

17. Ch. 4102 prohibits contractors “both from **acting as** a public insurance adjuster and from ‘**hold[ing] himself or herself out** to be a public insurance adjuster’ if the person does not have a license.” *Lon Smith & Associates, Inc. v. Key*, 527 S.W.3d 604, 620 (Tex. App.—Fort Worth 2017, pet. denied) (quoting § 4102.051(a)) (emphasis added); *Hill v. Spracklen*, No. 05-17-00829-CV, 2018 WL 3387452, at *5 (Tex. App.—Dallas July 12, 2018, pet. denied). Notably, “either type conduct violates” Ch. 4102. *Key*, 527 S.W.3d at 620.

18. In 2013, the Legislature singled out roofers for specific mention in Ch. 4102, clarifying that for roofers, Ch. 4102’s claims-handling prohibitions apply regardless. *See*

Tex. Ins. Code § 4102.163 (“A roofing contractor may not act as a public adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide roofing services, regardless of whether the contractor holds a license under this chapter.”).¹

19. More recently, the Commissioner for the Texas Department of Insurance issued three “Cease and Desist” orders against roofing contractors, each of which operated in violation of Ch. 4102.

20. On May 23, 2018, the Commissioner issued Order No. 2018-5505 pertaining to CSI Renovations, LLC. In so doing, the Commissioner cited the following unlawful conduct:

- “4. CSI included ***language describing the acts of a public insurance adjuster*** in the company’s marketing brochure, website, damage report document, and insurance work authorization form, including the following:
 - a. CSI’s marketing brochure stated: ‘Need help with an Insurance Claim? We will document your roof damage and contact your insurance company for you.’
 - b. CSI’s website, www.csiroofers.com, stated: ‘Roofing Insurance Claim Specialists in Fort Worth.’
 - c. CSI’s damage report document stated: ‘CSI Renovations, LLC hereby agrees to act as the Insured’s advocate with the insurance company to help determine fair market replacement value for all losses incurred in claim.’
 - d. CSI’s insurance work authorization form stated: ‘I hereby authorize CSI Renovations LLC to negotiate directly with my insurance company for repairs at the above address and negotiate property damage claim settlement.’”

Commissioner Order 2018-5505 (Texas Department of Insurance May 23, 2018) (emphasis added).

¹ Effective September 1, 2019, § 4102.163 was amended to apply to not only roofing contractors but to any “contractor.”

21. On May 24, 2018, the Commissioner issued Order No. 2018-5517 pertaining to A-Affordable Roofing Co., citing the following unlawful conduct:

- “4. A-Affordable included **language describing the acts of a public insurance adjuster** in the company’s proposal and contract, and business card, including the following:
- a. A-Affordable’s proposal and contract stated: “I hereby authorize A-Affordable to negotiate directly with my insurance company for all property damage repairs at the above address and to act as my agent to negotiate a property damage claim settlement.”
 - b. A-Affordable’s business card stated: “We work with your insurance company to get you every dime you are owed.”

Commissioner Order 2018-5517 (Texas Department of Insurance May 24, 2018) (emphasis added).

22. On October 5, 2018, the Commissioner issued Order No. 2018-5650, pertaining to R&R Exteriors, LLC, citing the following unlawful conduct:

- “4. R&R used **language describing the acts of a public insurance adjuster** on the company’s website, www.bestrooferdallas.com., including the following:
- a. ‘Texas licensed adjuster working with you on your insurance claims’;
 - b. ‘Walk you through the claims process every step of the way, always keeping in mind your unique roofing requirements and style preferences’;
 - c. ‘Ensure that you have a clear understanding of the process at all times, promptly informing you of significant updates or changes to your claim status’;
 - d. ‘Explain to you in plain English what your insurance settlement means’; and
 - e. ‘Aggressively pursue missing items and/or incorrect settlement pricing from the original adjuster’s assessment.’”

Commissioner Order 2018-5650 (Texas Department of Insurance Oct. 5, 2018) (emphasis added).

23. Pertinent to the relief to which Plaintiff is entitled here, “section 4102.207 gives an insured the option to void a contract entered into with a person ‘who is in

violation of Section 4102.051.” *Key*, 527 S.W.3d at 620 (quoting Tex. Ins. Code § 4102.207(a)); *Hill*, 2018 WL 3387452 at *5 (“Because Hill violated section 4102.051 of the insurance code, the Spracklens were entitled to void their agreements with him.”). “If a contract is so voided, ‘the insured is not liable for the payment of any past services rendered, or future services to be rendered, by the violating person under that contract or otherwise.” *Key*, 527 S.W.3d at 612 (quoting Tex. Ins. Code § 4102.207(a)); *Hill*, 2018 WL 3387452 at *5 (“Because the agreements are void, the Spracklens are not liable for the payment of any past services rendered, or future services to be rendered by Hill.”).

24. Since 2013, at least seven courts in Texas—five state and two federal—have upheld Ch. 4102’s application to roofers, ruling that Ch. 4102 barred any recovery for roofing services by roofers who violated Ch. 4102. *See, e.g., Key*, 527 S.W.3d at 632-35; *Reyelts v. Cross*, 968 F. Supp. 2d 835, 843–44 (N.D. Tex. 2013), *aff’d*, 566 Fed. Appx. 316 (5th Cir. 2014); *Hill*, 2018 WL 3387452, at *5.

25. Most important here, in the cases where the property owners had already paid money to their roofers for the completed roof, the courts ruled that Ch. 4102 required the roofers to refund the money to the property owners, without any offset for the alleged value of the roofing work performed. *See, e.g., Key*, 527 S.W.3d at 632-35; *Reyelts*, 968 F. Supp. 2d at 846 (“Plaintiffs are entitled to recover from the Lon Smith Defendants \$1,176.00, which represents the amount Plaintiffs paid to the Lon Smith Defendants under the illegal, void and unenforceable June 27, 2011 ‘Agreement.’”); *Hill*, 2018 WL 3387452, at *5 (upholding trial court’s ruling that “the Spracklens are entitled to recover the \$5,917.33 they paid to Hill without any offset for the value of the roof Hill installed” and declining to address Hill’s argument “that the trial court erred in failing to submit

jury questions on his breach of contract (offset) and quantum meruit claims”) (parenthetical in original).

26. Recently, the Fort Worth Court of Appeals in the *Key* case upheld the district court’s class certification order against Lon Smith Roofing, ruling the roofer’s form roofing contracts (promising to negotiate property owners’ insurance claims) to be illegal under Ch. 4102. *See, e.g., Key*, 527 S.W.3d at 626-27 (“First, the contracts are illegal”). In the *Key* case, the court upheld the district court’s class certification order of two claims, both of which were predicated on the roofer’s violation of Ch. 4102. The first was a declaratory-judgment claim, asserting the plaintiffs’ right to have the contract declared “illegal, void, and unenforceable” in view of the roofer’s violation of Ch. 4102. The second was the plaintiffs’ Deceptive Trade Practices Act (DTPA) claim under § 17.50(a)(4) for the roofer’s violation of Chapter 541 of the Texas Insurance Code. Moreover, the relief to which each class member is entitled is a complete refund of all monies paid to Lon Smith, without any offset for any alleged value of the roofing work performed. *Id.* at 632-35.

27. Even more recently, in June of 2019, the 96th District Court of Tarrant County, in action styled *Walter R. Blair and Sylvia W. Blair v. R & R Exteriors LLC* (the “*Blair* case”), ruled that R&R Exteriors’ form “Contract” and “Welcome Checklist” “include language that describes the acts of a licensed Public Insurance Adjuster and was violative of Chapter 4102 of the Texas Insurance Code,” and that as a result, R&R “violated Ch. 4102 of the Texas Insurance Code” and each such agreement “is void and unenforceable.” *See* “Order Granting Plaintiffs’ Motion for Partial Summary Judgment,” Cause No. 96-304464-18, June 7, 2019. Thereafter, in July of 2019, the court in the Blair case also ruled that R&R’s violation of Ch. 4102 also violated Ch. 541 of the Insurance

Code and § 17.50(a)(4) of the DTPA. *See* “Order Granting Plaintiffs’ Second Motion for Partial Summary Judgment,” Cause No. 96-304464-18, July 19, 2019. Both order also provided that the plaintiffs “shall have and recover from” R&R all amounts previously paid to R&R by reason of R&R’s illegal, void and unenforceable contract documents.

STATEMENT OF FACTS

Stonewater’s conduct

28. At all times relevant, Stonewater conducted business as a roofing contractor and was and is a “person” and a “roofing contractor” as defined and/or understood by Texas Insurance Code §§ 4102.001(2) and 4102.163, respectively.

29. Stonewater is not and never has been a PIA and does not and has never held a PIA license.

30. During the relevant time, Stonewater advertised and/or published language on Stonewater’s website and form contract document that describes the acts and/or services of a PIA.

31. During the relevant time, Stonewater published a website (<https://stonewaterroofing.com>) to the public, including Plaintiff, which advertised and represented, in part, that:

- A. “We are Trusted Insurance Specialists;”
- B. “We are Trusted Roofing and Insurance Specialists;”
- C. “The Leader In Insurance Claim Approval;”
- D. “We work with insurance companies to make the process easier for you;”
- E. “Insurance Claim Specialists,” explaining: “When a storm or natural disaster causes damage to your home, the last thing you want to deal with is insurance claims and roof repairs. We know that you want to get a fair insurance settlement and get your roof repairs done quickly and with the utmost quality – so that you can get your family back to its normal routine. We have extensive experience in dealing with insurance claims. We have worked thousands of insurance claims over the years

and we are highly experienced in working with Insurance Adjusters. We will be by your side throughout the entire process – from assessment to filing your claim to repair and on to the final claims payment.”

- F. “A Company You Can Trust,” explaining: “**Say Yes & We Do The Rest:** There are absolutely no headaches or hassles when you work with Stonewater Roofing. We agree to assist you with every step of the way, including the tedious and often confusing insurance claim process. We make sure that you get the most value for your deductible. After all, we are The Leader In Insurance Claim Approval;”
- G. “Insurance Claim Assistance,” explaining: “Did you know that damage to your home, inside and out, may be covered by your homeowner’s insurance? Not sure how to handle insurance claims? Tired of wondering if your roof will get replaced? We will handle your claim from start to finish! We offer insurance assistance with:
- Free claims management and assistance.
 - Guaranteed roof replacement for the insurance company negotiated price.
 - Complimentary roof inspection prior to you filing a claim.
 - The way an insurance claim is handled does make a difference!
 - Stonewater Roofing has worked with numerous insurance claims and has developed a system which helps our customers settle their insurance claims as quickly, painlessly and comprehensively as possible. By allowing us to assist you with the claims management process, you are guaranteed to get the best roof possible.
 - A well-handled claim should be a worry-free process, with a new roof being installed for very little out of pocket, typically only the deductible or any out-of-pocket upgrades. We have extensive knowledge working with insurance companies to get the correct amount paid out in order to replace your roof.
 - All of our customers can benefit from our complimentary claims management program. This program allows homeowners to be involved in as much or as little of the claims process as they like. We can handle the whole claim from start to finish. There are many small details and variables which can be overlooked or missed by the adjuster. As part of our complimentary claims management program, we take the time to ensure that all of the damage is properly assessed and covered by insurance. We then ensure that the roof is installed per the negotiated price.”
- H. “We have extensive experience with insurance claims, and can help you get a fair settlement,” explaining: “When a storm or natural disaster causes damage to your home, the last thing you want to deal with is

insurance claims and roof repairs. We know that you want to get a fair insurance settlement and get your roof repairs done quickly and with the utmost quality – so that you can get your family back to its normal routine. We have extensive experience in dealing with insurance claims. We have worked thousands of insurance claims over the years and we are highly experienced in working with Insurance Adjusters.”

- I. Under “Experience,” explaining: “We understand your needs, budget restraints and the insurance claim process better than anyone.”

32. During the relevant time, Stonewater utilized and published a form contract that included the following pre-printed language:

- A. “Insurance Specialist;”
- B. Under “ACCEPTANCE OF PROPOSAL,” above the place where Stonewater’s customers sign, “You are authorized to negotiate on my behalf with insurance company and upon insurance approval to do the work specified and payment will be made as outlined above;” and
- C. “*** CONTINGENT UPON INSURANCE APPROVAL ***[.]”

Stonewater’s Conduct in Relation to Plaintiff

33. Plaintiff is a professional association of cardiologists whose offices include the building located at 2401 SSE Loop 323, Tyler, Texas 75701 (“**Office**”).

34. At all times relevant, Plaintiff insured the Office against damage and loss, including damage due to hail, under a policy of insurance with CNA Continental Casualty Company (“**CNA**”). Thus, at all times relevant, Plaintiff was an “insured” as such term is used and understood in Texas Insurance Code § 4102.001(3)(i).

35. Plaintiff’s Office is located in an area that, as of May of 2017, had experienced one or more hail storms.

36. With the intent of soliciting Plaintiff’s business, Stonewater offered its advertised services to Plaintiff and eventually inspected the Office for damage, including for hail damage.

37. With the intent of soliciting Plaintiff's business, Stonewater prepared and provided Plaintiff an estimate describing what Stonewater represented was the scope of services required to repair the Office, including to remove and replace the metal roofing, and the cost of such services.

38. With the intent of soliciting Plaintiff's business, Stonewater advertised, published and provided Plaintiff with a copy of its form contract and marketing materials.

39. With the intent of soliciting Plaintiff's business, Stonewater represented that Plaintiff had suffered hail damage and that Plaintiff had an insurance claim for hail damage.

40. Stonewater sought to solicit and did solicit Plaintiff's business, including for Plaintiff to hire Stonewater to handle Plaintiff's insurance claim against CNA for damage to the Office.

41. As advertised, Stonewater represented and/or promised to Plaintiff, among other things:

- A. that Plaintiffs had a viable insurance claim against CNA;
- B. that Stonewater was able to negotiate and was skilled at negotiating property damage insurance claims on behalf of insureds like Plaintiff who have property damage claims resulting from hail damage to their property;
- C. that Stonewater would help Plaintiff recover from CNA on its insurance claim;
- D. that Stonewater could and would handle Plaintiff's insurance claim against CNA, including through negotiation and settlement of the claim; and
- E. Stonewater held itself out as being willing and able to provide services that only a licensed PIA can lawfully provide.

42. Stonewater proposed to Plaintiff to do the business of insurance although Stonewater was not authorized by statute to do the business of insurance.

43. Unbeknownst to Plaintiff, Stonewater's contract and conduct was illegal and amounted to and/or evidenced criminal offenses. Alternatively, Stonewater's advertised contract and conduct was negligent or constituted negligent misrepresentations.

44. Unbeknownst to Plaintiff, the claims-assistance, claims-handling and claims-negotiation services that Stonewater promised to provide were and are illegal and, when performed, would constitute and did constitute criminal offenses. Alternatively, Stonewater's advertised claims-assistance, claims-handling and claims-negotiation services that Stonewater promised to provide was negligent or constituted negligent misrepresentations.

45. The advertised representations and promises that Stonewater made to Plaintiff were made to induce Plaintiff into executing Stonewater's form contract and hiring Stonewater to, among other things, handle Plaintiff's insurance claim against CNA.

46. Relying on Stonewater's advertisements which included various representations and promises, Plaintiff agreed to hire Stonewater and executed Stonewater's form contract, dated March 26, 2018.

47. Unbeknownst to Plaintiff, Stonewater's contract was void and unenforceable.

48. Thereafter, Stonewater proceeded to handle Plaintiff's insurance claim, including negotiating and attempting to effect the settlement of the claim with CNA.

49. Eventually, Stonewater hired Choate, a PIA, ostensibly to assist Stonewater in negotiating Plaintiff's insurance claim against CNA.

50. Choate was provided a copy of the Stonewater's contract with Plaintiff, dated March 26, 2018.

51. As a PIA, Choate knew or should have known that:
- A. Stonewater's contract with Plaintiff illegally promised services that only a PIA could lawfully provide, that Stonewater had held itself as providing services that only a PIA could lawfully provide, and that Stonewater had acted as and provided services that only a PIA could lawfully provide;
 - B. Stonewater was and is a person in violation of Ch. 4102, including Ch. 4102.051 and Ch. 4012.163;
 - C. Stonewater's contract was void and unenforceable; and
 - D. Plaintiff would owe nothing to Stonewater under its void and unenforceable contract.

52. Nonetheless, Choate failed to inform Plaintiff of the potential illegality of Stonewater's contract and conduct or that Plaintiff would or even potentially would owe nothing to Stonewater under its void and unenforceable contract.

53. Eventually, through the illegal claims' negotiation efforts of Stonewater and the subsequent efforts of Choate, CNA agreed to pay part of the claim, which such part amounted to approximately \$493,945.00 ("**First Payment**").

54. From this First Payment, Choate took a fee of approximately \$ 74,135.00.

55. From this First Payment, Choate allowed Stonewater to be paid \$419,810.00.

56. Stonewater advised Plaintiff the claim had been partially approved, but the remaining part needed to be resolved through what Stonewater described as an appraisal process with CNA.

57. Stonewater then persuaded Plaintiff to hire Fred Lupfer to be Plaintiff's appraiser in the appraisal process with CNA.

58. Eventually, Stonewater advised Plaintiff that "the appraisal process has been completed at this time," that it "turned over a lot quicker than we presumed," and that "in as little as 2-3 weeks the results of their findings could be back to us."

59. In early April of 2019, the appraisers' findings were memorialized in an "Appraisal Award" which resulted in an additional payment of \$387,002.86 from CNA on Plaintiff's claim ("**Second Payment**").

60. From this Second Payment, Choate attempted to take an additional fee of approximately \$17,200.24.

61. From this Second Payment, Stonewater attempted to take an additional payment of approximately \$369,802.62.

62. Also, Stonewater demanded payment of \$25,000.00, allegedly representing the amount of Plaintiff's deductible on its insurance claim, and Plaintiff paid Stonewater \$25,000.00.

63. In the meantime, Plaintiff learned that while the claim that Stonewater had submitted to CNA, that Stonewater and Choate had negotiated with CNA, that Lupfer had allegedly resolved in the appraisal process with CNA, and that CNA had allegedly paid called for the removal and replacement of the metal roof on the Office, Stonewater had actually not removed and replaced the metal roof but had instead covered the existing damaged roof with a cheaper and inferior overlay product.

64. Despite having installed a cheaper and inferior overlay product, Stonewater began demanding payment for its alleged services in an amount that was calculated based on the removal and replacement of the metal roof.

65. At all times material, Stonewater and Choate had actual awareness of the law that made Stonewater's conduct unlawful. Nonetheless, Stonewater proceeded to engage in the unlawful conduct described above, all with the aim of illegally obtaining money from Plaintiff and damaging Plaintiff, while Choate took no action to make

Plaintiff aware of the illegality of Stonewater's conduct or to prevent Plaintiff from being harmed by Stonewater's illegal conduct.

66. As a result of Stonewater and Choate's conduct, Plaintiff has sustained economic damages for which Plaintiff hereby seeks recovery.

67. All conditions precedent have been performed or have occurred.

CAUSES OF ACTION

FIRST COUNT: DECLARATORY JUDGMENT

68. Plaintiff requests a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, Texas Civil Practice & Remedies Code § 37.001, *et seq.* An actual present and justiciable controversy has arisen between Plaintiff and Stonewater concerning, *inter alia*, the alleged contract between Plaintiff and Stonewater, including the validity of such contract.

69. Stonewater's alleged contract is illegal, void and unenforceable for the following reasons:

- A. Unauthorized Practice of Public Insurance Adjusting. As shown above, Stonewater engaged in conduct that is prohibited by Ch. 4102, including by acting as and holding itself out to be a PIA, as well as by advertising, soliciting business and holding itself out as an adjuster of claims. On its face, Stonewater's alleged contract, by promising these services, promised services that were and are illegal, that violate Texas penal law, and that expose Stonewater to criminal liability.
- B. Unauthorized Business of Insurance. As shown above, Stonewater engaged in conduct that is prohibited by Ch. 101, including conduct that constitutes the business of insurance, requiring statutory authority, which Stonewater lacked. On its face, Stonewater's alleged contract, by promising these services, promised services that were and are illegal, that violate Texas penal law, and that expose Stonewater to criminal liability.

- C. Unauthorized Practice of Law. As shown above, Stonewater engaged in conduct that constitutes the unlicensed and illegal practice of law. *See Green v. Unauthorized Practice of Law Comm.*, 883 S.W.2d 293, 298 (Tex. App.—Dallas 1994, no writ); *Brown v. Unauthorized Practice of Law Comm.*, 742 S.W.2d 34, 41 (Tex. App.—Dallas 1987, writ denied); Tex. Gov’t Code Ann. § 81.101. On its face, Stonewater’s alleged contract, by promising these services, promised services that were and are illegal, that violate Texas penal law, and that expose Stonewater to criminal liability. *See* Tex. Gov’t Code Ann. §§ 81.051(a), 81.102 (a); Tex. Penal Code § 38.123 (making the Unauthorized Practice of Law a criminal offense); *see also Unauthorized Practice of Law Comm. v. Am. Home Assurance Co.*, 261 S.W.3d 24, 33 (Tex. 2008) (“We start from a point of agreement among the parties, that a corporation is not authorized to engage in the practice of law.”).

70. Plaintiff is entitled to and hereby seeks a judgment from this Honorable

Court:

- A. declaring that Stonewater’s contract is illegal, void and unenforceable and that Plaintiff is not liable for the payment of any past services rendered, or future services to be rendered, by Stonewater under that contract or; and
- B. declaring that Stonewater’s violation of Ch. 4102 and Ch. 101 constituted an unfair and deceptive act or practice in the business of insurance under Ch. 541 of the Insurance Code and an act or practice in violation of Ch. 541, *see Key*, 527 S.W.3d at 622; *Reyelts*, 968 F. Supp. 2d at 844; Commissioner Order No. 08-1041 (Tex. Dept. of Ins., Dec. 18, 2008) (confirming that public adjuster activities by one who does “not hold a license or certificate of authority to perform the acts of a public insurance adjuster” “constitute unfair and deceptive acts or practices in the business of insurance as contemplated in TEX. INS. CODE. ANN. Ch. 541”);
- C. awarding Plaintiff a sum amounting to all monies Plaintiff previously paid to Stonewater under its illegal, void and unenforceable contract, which such sum amounts to approximately \$444,810.01.

71. Pursuant to § 37.009, Tex. Civ. Prac. & Rem. Code, Plaintiff is entitled to and hereby seek recovery for Plaintiff’s attorneys’ fees and costs incurred in this action.

**SECOND COUNT:
CH. 4102: UNAUTHORIZED PRACTICE OF
PUBLIC INSURANCE ADJUSTING**

72. As shown above, Stonewater engaged in conduct that is prohibited by Ch. 4102, including by acting as and holding itself out to be a PIA, as well as by advertising, soliciting business and holding itself out as an adjuster of claims. On its face, Stonewater's alleged contract, by promising these services, promised services that were and are prohibited by Texas law.

73. Pursuant to § 4102.207, Stonewater's contract is void and unenforceable, and Plaintiff is entitled to and do hereby seek recovery of all monies they paid to Stonewater (approximately \$444,810.01).

**THIRD COUNT:
QUANTUM VALEBANT / MONEY HAD AND RECEIVED**

74. As shown above, Stonewater's contract with Plaintiff is illegal, void and unenforceable.

75. Accordingly, Plaintiff is entitled to and do hereby seeks disgorgement of the monies they paid to Stonewater (approximately \$444,810.01) pursuant to the illegal, void and unenforceable contract. *See City of Denton v. Municipal Admin. Servs., Inc.*, 59 S.W.3d 764, 770 (Tex. App.-Fort Worth 2001, no pet.) (“When a court holds a contract void . . . a party may seek recovery for amounts paid under the common law theory of *quantum valebant* for money had and received [citations omitted]. Thus, because the trial court should have held the contract void, it should have entered judgment for a refund of the fees paid . . .”), *see Neese v. Lyon*, 479 S.W.3d 368, 370 (Tex. App.—Dallas 2015, no pet.); *see also* Tex. Ins. Code § 4102.207(b) (“If a contract is voided under this section, the insured is not liable for the payment of any past services rendered, or future services to be rendered, by the violating person under that contract or otherwise.”).

**FOURTH COUNT:
NEGLIGENCE, GROSS NEGLIGENCE AND
NEGLIGENT MISREPRESENTATIONS OF STONEWATER**

76. Stonewater had a duty to use reasonable care whenever it provided information to Plaintiff. *Fed. Land Bank Ass'n v. Sloane*, 825 S.W.2d 439, 442 (Tex. 1991). However, Stonewater used misleading advertisement practices and published the following to the public in the course of Stonewater's business and to Plaintiff during a transaction in which Stonewater had a pecuniary interest:

- A. That Stonewater's agents were able to perform function for Plaintiff they were unable or could not perform;
- B. that Plaintiffs had a viable insurance claim against CNA;
- C. that Stonewater was able to negotiate, and was skilled at negotiating property damage insurance claims on behalf of insureds like Plaintiff who have property damage claims resulting from hail damage to their property;
- D. that Stonewater would help Plaintiff recover all available insured claim proceeds from CNA on its insurance claim;
- E. that Stonewater could and would handle Plaintiff's insurance claim against CNA, including through negotiation and settlement of the claim; and
- F. Stonewater held itself out as being willing and able to provide services that only a licensed PIA can lawfully provide.

77. Stonewater did not exercise reasonable care or competence in communicating that information.

78. Additionally, following the adjustment of Plaintiffs claim, CNA agreed to pay for the removal and replacement of the metal roof on the Office. Stonewater made representations to Plaintiff that were either negligent under constitutional negligence misrepresentation, and instead of removing and replacing the metal roof, covered the existing damaged roof with a cheaper and inferior overlay product.

79. Plaintiff justifiably relied on Stonewater's representations.

80. Despite having installed a cheaper and inferior overlay product, Stonewater began demanding payment for its alleged advertised services in an amount that was calculated based on the removal and replacement of the metal roof.

81. As a proximate cause of Stonewater's negligence, Plaintiff has sustained actual damages in the amount of \$444,810.01

82. Stonewater is therefore liable for breaching the duty to use reasonable care in providing information to Plaintiff. *Id.* (holding that the elements of negligent misrepresentation are (1) representation made in the course of his business or transaction in which defendant has a pecuniary interest, (2) defendant supplies false information for the guidance of others in their business, (3) defendant did not exercise reasonable care or competence in obtaining or communicating information, and (4) plaintiff suffers pecuniary loss by justifiably relying on the representation).

**FIFTH COUNT:
FRAUD**

83. Stonewater is guilty of fraud, including fraud by nondisclosure. Stonewater's alleged contract and website contain material representations that were and are false. Moreover, Stonewater made additional fraudulent representations in order to induce Plaintiff to hire Stonewater. At the time Stonewater made the representations, it knew them to be false or, in the alternative, the false representations were made recklessly as a positive assertion and without knowledge of the truth. These representations were made to Plaintiff, and Plaintiff relied upon them to their detriment and injury, including in making the decisions to hire and to pay Stonewater pursuant to Stonewater's illegal, void and unenforceable contract.

SIXTH COUNT:
CH. 541: UNFAIR METHODS OF COMPETITION AND
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

84. By letter dated July 23, 2019, Plaintiff gave written notice to Stonewater in satisfaction of § 541.154 of the Insurance Code.

85. Stonewater has engaged in conduct that constitutes an unfair method of competition or an unfair or deceptive act or practice in the business of insurance in violation of § 541.003 of the Texas Insurance Code.

86. Pursuant to § 541.151 of the Texas Insurance Code, Plaintiff brings this cause of action to recover the damages it sustained as a result of Stonewater's unlawful conduct in violation of Subchapter B of Chapter 541 and those specifically enumerated from § 17.46(b) of the DTPA, as follows:

- A. § 17.46(b)(2), by causing confusion or misunderstanding as to the approval, or certification of [Stonewater's] services;
- B. § 17.46(b)(5), by representing that [Stonewater's] services have approval and/or characteristics they did not have or that [Stonewater] had approval, status, affiliation, or connection which [Stonewater] did not have;
- C. § 17.46(b)(7), by representing that [Stonewater's] services are of a particular standard, quality, or grade [when] they are of another;
- D. § 17.46(b)(12), by representing that [the alleged contract between Stonewater and Plaintiff] confers or involves rights which are prohibited by law;
- E. § 17.46(b)(14), by misrepresenting the authority of [Stonewater] to negotiate the final terms of a consumer transaction;
- F. § 17.46(b)(24), by failing to disclose information concerning [Stonewater's] services which was known at the time of the transaction when such failure to disclose such information was intended to induce [Plaintiff] into a transaction into which [Plaintiff] would not have entered had the information been disclosed.

87. Pursuant to § 541.152(a), Plaintiff is entitled to recover and hereby seeks recovery of:

- A. Plaintiff's actual damages, plus court costs and reasonable and necessary attorney's fees;
- B. an order enjoining Stonewater's unlawful conduct; and
- C. "any other relief the court determines is proper."

88. Moreover, Stonewater's unlawful conduct was committed "knowingly," as that term is defined in Ch. 541. *See* Tex. Ins. Code § 541.002(1) ("Knowingly" means actual awareness of the falsity, unfairness, or deceptiveness of the act or practice on which a claim for damages under Subchapter D is based. Actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness."). Accordingly, Plaintiff is entitled to and hereby seeks recovery of **three times** the amount of its actual damages, in an amount not less than \$1,334,430.03. *See* Tex. Ins. Code § 541.152(b).

**SEVENTH COUNT:
NEGLIGENCE & GROSS NEGLIGENCE OF CHOATE**

89. Choate owed, at a minimum, a duty of reasonable care to Plaintiff. Choate breached this duty in several ways, including by failing to advise Choate's client, Plaintiff, of the illegality and/or the potential illegality of Stonewater's contract and conduct.

90. Choate knew or should have known that:

- A. Stonewater's contract with Plaintiff illegally promised services that only a PIA could lawfully provide, that Stonewater had held itself as providing services that only a PIA could lawfully provide, and that Stonewater had acted as and provided services that only a PIA could lawfully provide;
- B. Stonewater was and is a person in violation of Ch. 4102, including Ch. 4102.051 and Ch. 4012.163;
- C. Stonewater's contract was illegal, void and unenforceable; and
- D. Plaintiff owed nothing to Stonewater under its illegal, void and unenforceable contract.

91. Nonetheless, Choate failed to inform Plaintiff of the illegality or even the potential illegality of Stonewater's contract and conduct or that Plaintiff would or even potentially would owe nothing to Stonewater under its illegal, void and unenforceable contract. Moreover, Choate allowed monies that Plaintiff did not owe to Stonewater to be paid to Stonewater, even facilitating the payment of same.

92. As a proximate cause of Choate's negligence, Plaintiff has sustained actual damages. Plaintiff continued to utilize the illegal services of Stonewater and monies belonging to Plaintiff (approximately \$444,810.01) that should never have been paid to Stonewater were paid to Stonewater.

93. Moreover, Choate's acts and omissions amount to gross negligence, as defined in Chapter 41, Tex. Civ. Prac. & Remedies Code, entitling Plaintiff to a recovery of exemplary damages.

**EIGHTH COUNT:
BROWNE'S DIRECT & VICARIOUS LIABILITY**

94. Browne is the owner of Stonewater and is liable to Plaintiff for all damages, fees and costs sought herein under each of the following theories:

- A. Direction and Participation: Browne directed and/or participated in Stonewater's "holding out" to Plaintiff, fraud and other wrongful conduct, resulting in Plaintiff's execution of the illegal contract and payment of money to Stonewater. As a result, Browne is liable to Plaintiff for the same damages and to the same extent as Stonewater;
- B. Negligence & Gross Negligence: In the alternative, Browne knew or should have known that the conduct of Stonewater alleged herein violated Ch. 4102, but he failed to take any and/or adequate corrective action and, instead, allowed Stonewater to violate Ch. 4102. As a proximate cause of the Browne's negligence, Plaintiff suffered the actual damages alleged herein. Moreover, Browne's conduct amounted to gross negligence as defined in Ch. 41, Tex. Civ. Prac. & Remedies Code.

- C. Aiding and Abetting/Assisting or Encouraging/Assisting and Participating: Browne is vicariously liable for the wrongful conduct of Stonewater as alleged herein under the theories of Aiding and Abetting, Assisting or Encouraging, and/or Assisting and Participating.

DAMAGES AND EXEMPLARY DAMAGES

95. As result of Stonewater and Choate's conduct, Plaintiff payed monies that it did not owe to Stonewater, approximately \$444,810.01. The payment of these monies constitutes actual damages for which Stonewater and Choate are liable.

96. Moreover, Stonewater and Choate's conduct gives rise to Plaintiff's right to recover exemplary damages. *See* Tex. Civ. Prac. & Rem. Code § 41.003(a)(1, 3).

97. With respect to Plaintiff's recovery under the Ch. 541 of the Insurance Code, because Stonewater's conduct was committed "knowingly," as that term is defined in § 541.002(1), Plaintiff is entitled to and hereby seeks recovery of **three times** the amount of its actual damages, in an amount not less than \$1,334,430.03.

REQUESTS FOR DISCLOSURE

98. In compliance with Texas Rule of Civil Procedure 194, Plaintiff hereby serves Requests for Disclosure to Stonewater, Browne and Choate. Plaintiff requests Stonewater, Browne and Choate to provide all information responsive to Texas Rule of Civil Procedure 194.2 (a) through (l) within the time required by the Texas Rules of Civil Procedure.

PRAYER AND DEMAND FOR JUDGMENT

WHEREFORE, PREMISES CONSIDERED, Plaintiff Tyler Cardiovascular Consultants, P.A. prays that, upon final hearing, the Court enter a judgment against Defendant Stonewater Roofing, Ltd., making the following declarations:

1. Stonewater's website and alleged contract include language that describes the acts of a licensed Public Insurance Adjuster;

2. Stonewater's website and alleged contract, promising services that describe the acts of a licensed Public Insurance Adjuster in violation of Ch. 4102 of the Texas Insurance Code, constituted Stonewater's holding itself out as a PIA in the State of Texas;
3. Stonewater's conduct, including its conduct under Stonewater's alleged contract, constituted the performance of services of a PIA in the State of Texas;
4. Given the fact that Stonewater is both a roofing contractor and not licensed as a PIA under Ch. 4102, Stonewater's website and alleged contract promised to provide services that are violative of Ch. 4102;
5. Given the fact that Stonewater is both a roofing contractor and not licensed as a public adjuster under Ch. 4102, by tendering to Plaintiff Stonewater's alleged contract, Stonewater held itself out as providing and/or advertised itself as providing services of a licensed PIA in violation of Ch. 4102;
6. Stonewater violated Ch. 4102, and its alleged contract is illegal, void, and unenforceable under Ch. 4102;
7. Plaintiff is "not liable for the payment of any past services rendered, or future services to be rendered, by [Stonewater] under that contract or otherwise," and Plaintiff owes nothing to Stonewater, *see* Tex. Ins. Code § 4102.207(b);
8. Stonewater's alleged contract promised services which constitute the business of insurance under Ch. 101 of the Texas Insurance Code, although Stonewater was not authorized by statute to perform such business;
9. Stonewater's conduct constituted the business of insurance under Ch. 101 of the Texas Insurance Code, although Stonewater was not authorized by statute to perform such business;
10. Stonewater's alleged contract is illegal, void, and unenforceable under Ch. 101 which prohibits the unauthorized practice of the business of insurance;
11. Stonewater's alleged contract promised services which constitute the unauthorized practice of law;
12. Stonewater's conduct constituted the unauthorized practice of law;
13. Stonewater's alleged contract is illegal, void, and unenforceable under Texas law which prohibits the unauthorized practice of law;
14. Stonewater's violation of Ch. 4102 and Ch. 101 constituted an unfair and deceptive act or practice in the business of insurance under Ch. 541 and an act or practice in violation of Ch. 541;

15. Stonewater's actions, including its advertisements to the public and Plaintiff constituted negligence and negligent misrepresentations; and
16. Plaintiff is entitled to a complete refund of all monies paid to Stonewater pursuant to the alleged contract, including \$444,810.01.

Plaintiff further prays that the Court enter judgment against Stonewater awarding Plaintiff all of its damages (actual and exemplary), attorneys' fees and court costs sought herein. Plaintiff prays for such other relief against Stonewater to which it may show itself to be justly entitled.

Plaintiff Tyler Cardiovascular Consultants, P.A. also prays that, upon final hearing, the Court enter a judgment against Defendant Roland Browne III, Defendant Axiom Public Adjusting, L.L.C. and Defendant Raymond C. Choate awarding Plaintiff all of its damages (actual and exemplary), and court costs sought herein. Plaintiff prays for such other relief against Defendants Browne, Axiom and Choate to which it may show itself to be justly entitled.

Respectfully submitted,

By: /s/ David E. Littman

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing instrument has been served on counsel for defendants through e-File in accordance with the Texas Rules of Civil Procedure, on this 18th day of November, 2019

/s/ David E. Littman _____
DAVID E. LITTMAN

Exhibit D

Texas homeowners' market under pressure but unlikely to be 'next California'

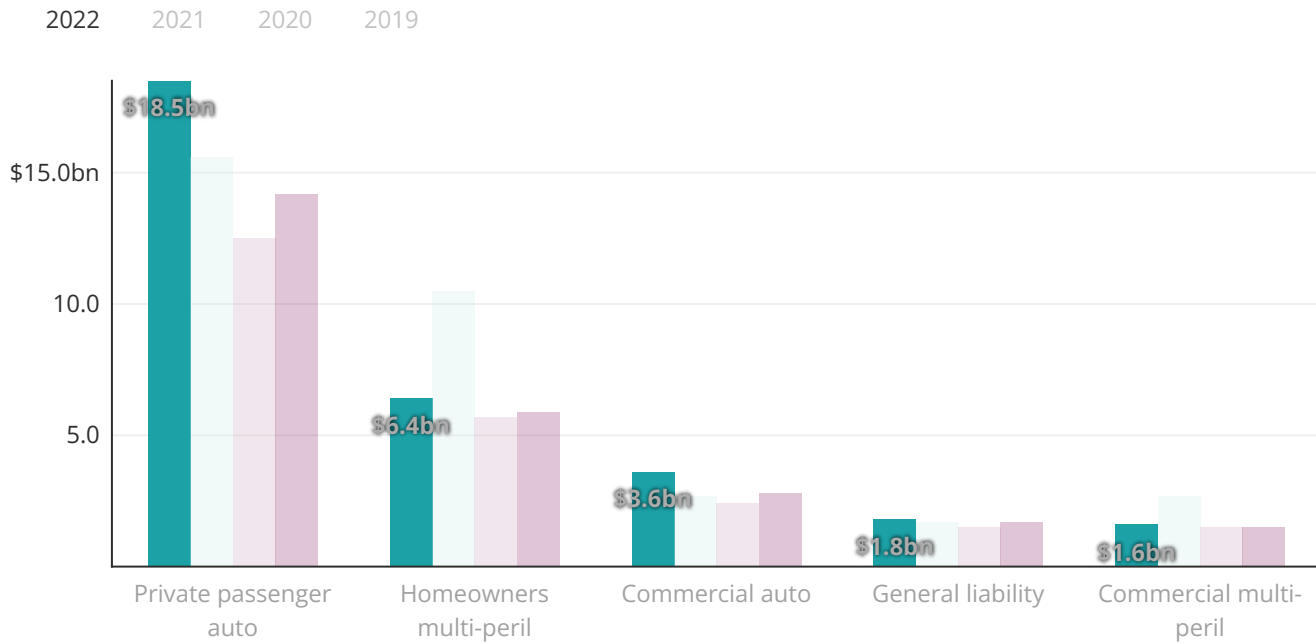
Shelby Rosenberg October 17, 2023



Following upheaval in the Florida and California homeowners' insurance markets, the industry is watching Texas for signs that it could be the next to reach a crisis point, but sources say that a flexible regulatory environment and strong legislative protections will prevent an insurance meltdown in the Lone Star state.

In 2022, Texas ranked third in incurred losses behind Florida and California, clocking in at \$53bn, according to data from the Insurance Council of Texas (ICT). Total direct losses declined 3.6% compared with 2021, but still came in 32% higher than in 2020.

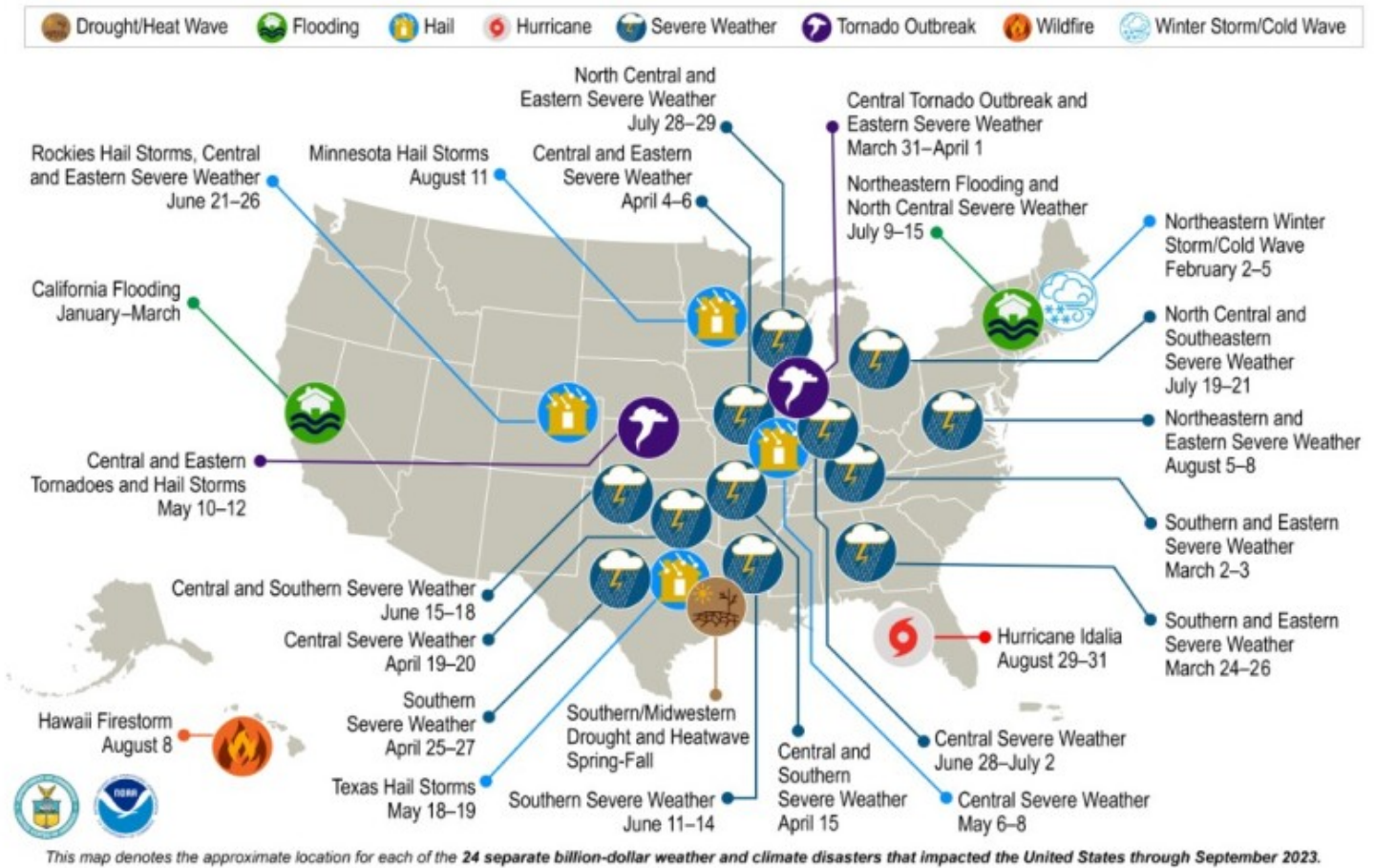
Top five direct losses by line in Texas



Source: Insurance Council

Meanwhile, a series of \$1bn+ storms in Texas since 2021 have shaken reinsurers' confidence in cat models to price effectively for losses. Consequently, sources said, reinsurers are levying hefty rate increases and bumping up cedants' retention to accommodate for the possibility that more high-loss events could become the new norm in the state.

US 2023 billion-dollar weather and climate disasters



Source: National Centers for Environmental Information, NOAA

Sources who spoke with *Inside P&C* said carriers have sought to restore profitability through a mix of rate hikes, policy restrictions and localized non-renewals and moratoriums on new business.

With fewer and more expensive options available for homeowners, Texas's residual market has grown steadily for the past three years, as did California's Fair Plan and Florida's Citizens leading up to the eventual large-scale pullbacks rocking those states.

Key points

- A series of \$1bn+ storms in Texas since 2021 have shaken reinsurers' confidence in cat models to price effectively for losses, leading to hefty rate increases.
- Carriers have sought to restore profitability through a mix of double-digit rate hikes, policy restrictions and localized non-renewals and moratoriums on new business.
- Policies held by Twia, Texas' predominant insurer of last resort, started to grow in 2021 after an eight-year decline. Carrier participation in Twia's depopulation program has also fallen.
- Texas' regulatory system offers carriers more flexibility to levy and implement rate increases and policy adjustments, which sources say is helping the market to remain "robust".
- Legislators have been quick to react to waves of bad-faith or frivolous litigation over the years through a "balanced tweaking" of existing statutes that has ultimately preserved coverage.

Texas policyholders feel the squeeze

State legislator Tom Oliverson, who chairs the House Insurance Committee, said he's heard from homeowners whose rates have increased between 50% and 100% in recent renewals.

"I've definitely heard from constituents, citizens and colleagues, some of whom are in the insurance industry themselves, that there's been a significant change in the marketplace over the last six months," Oliverson told *Inside P&C*.

"We're looking at possibly having an insurance committee hearing [during the current special session, which started on October 9] to get a sense of how bad this is and what, if anything, we can do to help stabilize it."

Albert Betts, executive director of the ICT, said that beyond rate hikes, carriers are increasingly opting to replace storm-damaged roofs at actual cash value rather than replacement cash value, and are raising deductibles.

Beaman Floyd, director of the Texas Coalition for Affordable Insurance Solutions, another industry body, pointed to carriers who have trimmed their appetite for new business, non-renewed existing policies and implemented cancellations.

He emphasized, however, that these moves are still localized in the state and that to his knowledge they aren't part of a broader strategy to reduce business, as carriers in California and Florida are doing.

Top 10 Texas homeowners' multi-peril carriers by market share

Rank (DWP)	Company	DWP (\$000)	Market share (DWP)
1	State Farm Group (G)	2,504,837	18.6%
2	Allstate Insurance Group (G)	1,955,584	14.5%
3	USAA Group (G)	1,335,867	9.9%
4	Liberty Mutual Insurance Companies (G)	1,276,224	9.5%
5	Farmers Insurance Group (G)	1,163,542	8.6%
6	Travelers Group (G)	835,065	6.2%
7	Nationwide Group (G)	335,677	2.5%
8	Texas Farm Bureau Group (G)	317,550	2.4%
9	Homeowners of America Insurance Company	309,524	2.3%
10	Progressive Insurance Group (G)	306,396	2.3%
Total		10,340,266	76.8%
Total US P&C industry (Texas)		13,472,631	100.0%

Source: AM Best



Sources said the biggest driver of the hardening homeowners' market are skyrocketing reinsurance costs.

In part, that reflects a trend across the property cat market.

Nearly \$70bn of cat losses were taken by the (re)insurance market in the first half of 2023, with Hurricane Idalia set to be yet another retention event for cedants.

The distribution of losses between insurers and reinsurers in H1 demonstrated how higher retentions in reinsurance programs and the falling away of aggregate covers led to cedants **shouldering more of the loss burden**.

The Texas reinsurance market is grappling with its own challenges, however. Multiple sources cited the 2021 Polar Vortex Texas Freeze – or Winter Storm Uri – which racked up \$11.5bn in insured losses and \$3.5bn in losses taken on by reinsurers, as a “completely unmodeled” event.

This loss, coupled with the rising frequency and severity of severe convective storms (SCS) in the state, meant that the industry's confidence in the existing models is waning.

As a result, reinsurers have started to rely more on their own judgement when setting rates, which in many cases means going beyond what the models indicate, said Austin-based Max McClure, chief insurance officer of InsurTech Steadily.

“We pretty much experience every kind of peril you can imagine from a homeowners' policy perspective”

State legislator Dr Tom Oliverson

Twia: An insurer of only resort?

As in Florida and California, the Texas residual market has felt the downstream impacts of these disruptions.

Texas has two insurers of last resort: the Texas Windstorm Insurance Association (Twia) and the Texas Fair Plan Association (TFPA). Both serve Texans who cannot obtain residential or commercial insurance in the private market.

Established in 1971, Twia maintains the bulk of policies and exposure between in the residual market as it covers 14 “tier one” coastal counties and parts of neighboring Harris County, where

risk for wind and hail is perceived to be higher.

Formed in 2002, TFPA covers the rest of the state's residual market with \$13.5bn in exposure across 66,000 policies in force. According to ICT data, TFPA policy numbers have increased for the first time in six years. About 500 policies were due to the February 2023 insolvency of Florida-based carrier UPC; others were due to a reduction of coverage in the private market.


While sources said the TFPA increase was notable, they emphasized that they're watching Twia much more closely as its larger exposure base makes it a better proxy for the state of the private market.

In 2021, Twia's policies in force started to grow steadily, reversing an eight-year decline that began in 2013.

Twia exposure and PIF growth

Year	Liability in force end of period
2013	76,921,369
2014	78,763,302
2015	78,551,742
2016	73,393,573
2017	65,023,810
2018	58,041,760
2019	55,189,815
2020	55,009,638
2021	59,543,596
2022	75,698,532
2023	86,248,091

Source: Twia

A  14,000 of these policies came from the insolvencies of three Florida-based carriers in late 2022 and early 2023 that led to the exits of three companies from the Texas coastal market:

Weston Property & Casualty Insurance Company, Federated National, and United Property & Casualty Insurance Company.

However, Twia CFO Stuart Harbour [noted in May](#) at the association's first-quarter board meeting, that growth was also due to a decline in the number of policies sold by the private market.

As of June 30, Twia held around 237,000 policies in force, a 20.1% increase over the prior-year period, while exposure has grown 36.6% year over year to \$86.2bn. It is projected to reach 247,000 policies and more than \$94bn in liability by the end of 2023; then nearly 265,000 policies and more than \$109bn in liability by the end of 2024.

Carrier participation in Twia's yearly assumption reinsurance depopulation round, which allows insurers to make offers on large numbers of Twia policies during one set period of the year, has also declined steadily since 2017. That year, four carriers took part. In each of the last two rounds, however, just one carrier participated, and in this year's round, none submitted an application.

Assumption reinsurance depopulation program

	2016-2017	2017-2018	2018-2019	2019-2020
Participating carriers	4	3	2	2
Policies selected by carriers	102,171	109,356	75,039	64,380
Agent-approved offers	18,047	3,091	3,967	1,866
Policies assumed	11,164	1,634	2,080	1,002

**No carriers have submitted applications to participate in round seven (2023-2024) of the Assumption Program*

Source: Twia

During the public comment period of Twia's August board meeting, Texas senator Mayes Middleton said that "Twia began as the insurer of last resort and has now become the insurer of only resort".



Another politician added that “the industry has abandoned the coast, and there’s got to be some incentive to bring them back”.

Twia director David Durden told *Inside P&C* that Weston and UPC were significant participants in the program at various points, and that reduced insurance agent interest in accepting depopulation offers may be reflective of those recent insolvencies.

It isn’t just carriers who are more reticent to engage; fewer policyholders are opting to switch back to the private market when given the choice to do so.

In 2016, 11,000 policies went back to the private market. Three years later, that number plummeted to 1,002. In 2022, it dropped to just 46 out of a total of 30,000 offers from carriers.

As with other Fair plans, Twia’s rates are typically much lower than those of the private carriers, making it easy to see why a policyholder might choose to stay with Twia despite the comparatively minimal coverage its homeowners’ policies offer.

Despite [voting five to four to raise rates 5%](#) this August following the recommendation of Twia’s actuarial committee, the board’s vote failed to meet the two-thirds majority needed to pass. Consequently, rates will remain flat for the 2023 to 2024 fiscal year.

Since 2010, the approved rate change for residential policies has never gone above 5% and, in just under half of those years, the rate change was 0%.

A challenging cat environment

Sources agreed that while climate volatility is getting worse across the 50 states, Texas is unique in that it’s a mixed bag of severe catastrophic events.

“We pretty much experience every kind of peril you can imagine from a homeowners’ policy perspective,” said Oliverson.

“You can see a broad swath of different types of claims depending on what region of the state you’re talking about.”

Texas is particularly impacted by hail, ranking first in US occurrences in 2022 with more than 400 separate events. The state has seen by far the most hailstorm activity of any state over the last 10 years, and hail activity across the state appears to be escalating.

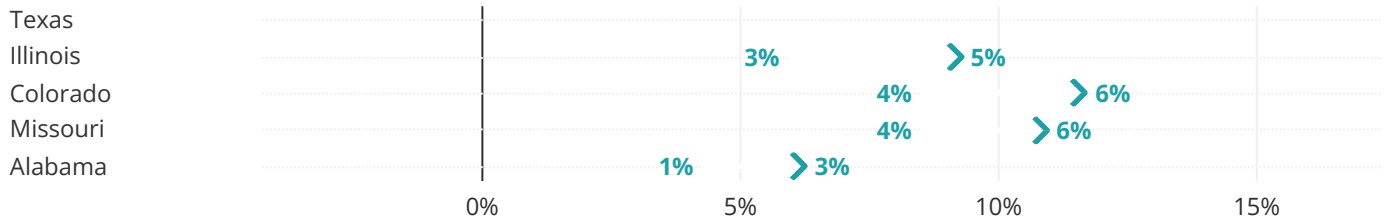


A larger than usual share of US hail events has occurred in Texas this year

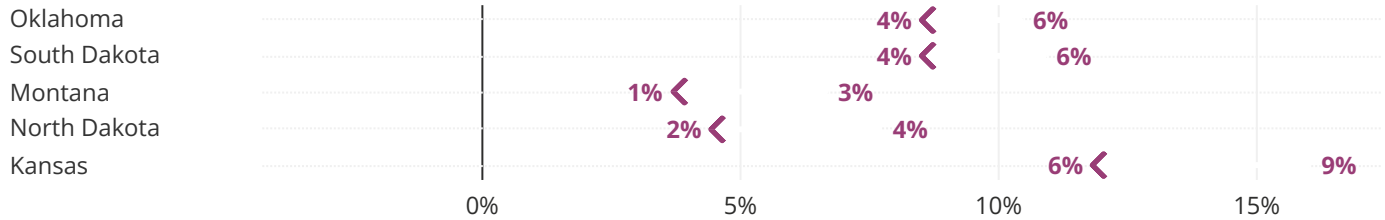
States with the largest differences between the share of national hail events they experienced between 2013 and 2022 and experienced so far in 2023

More activity than usual

2



Less activity than usual



How to read this chart:

- Between 2013 and 2022, **13%** of all recorded hail events in the US occurred in **Texas**
- So far in 2023, **16%** of all recorded hail events in the US occurred in **Texas**

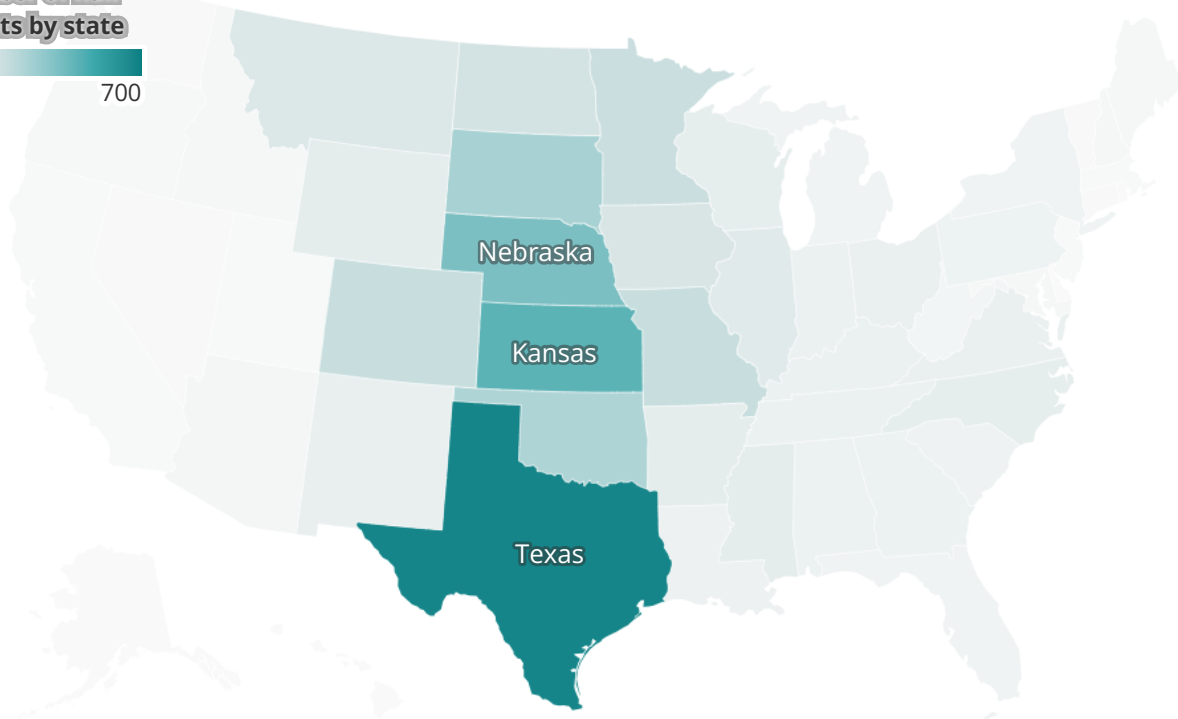
Source: NOAA National Weather Service



Texas has seen by far the most hailstorm activity of any state over t

Average annual
number of hail
events by state

0 700



Historical data is for the 10 years from 2013 to 2022

Source: NOAA National Weather Service

Floyd pointed to a series of hailstorms that rolled through the state this May causing over \$1bn in insured losses, while another set of hailstorms that ravaged central Texas in September have the potential to surpass \$1bn in losses, according to the National Centers for Environmental Information 2023 National Climate Report.

Wildfire activity is also escalating in parts of Texas. In 2022, the state ranked third in homes at risk for extreme wildfires, behind California and Florida. Severe drought, exacerbated by an ongoing La Niña pattern, resulted in one of the worst wildfire years since 2011, according to data from the Texas A&M Forest Service.

Sources mentioned Dallas Fort Worth, Austin, and the Houston-Galveston area as hot spots that the insurance industry is watching closely, particularly as people flow into these areas from other states as part of a longer-term migration into Texas.

From 2021 to 2022, Texas was second only to Florida in net domestic migration – the number of people moving in vs. moving out – notching population growth of 1.6% according to US Census data.

"A lot of the newer communities are in these areas that are more wildfire-prone and, similar to California, Texas has a tough task with proactive forest management" noted McClure.

"Increasing exposure in that part of the state is definitely something that we'll have to contend with over time."

"One thing that makes it difficult to commit to a high-risk environment is a statutory mechanism that says if you come into the market and lose money, you're not allowed to get out – you've got to keep losing money"

Beaman Floyd, director, Texas Coalition for Affordable Insurance Solutions

A state-by-state case study

Even as the private Texas market contracts, sources told *Inside P&C* that it's capable of withstanding an eventual collapse.

"It's hard for me to imagine our homeowners' insurance market getting to the point of Florida and California, even though we do have the climate volatility of [those states]," McClure said.

"The regulatory environment from a business perspective is much more favorable in Texas, and the State Department of Insurance is very proactive and reactive to industry feedback. I think that is a key differentiator."

Under Texas's regulatory system, carriers submit rate requests on a file and use basis, meaning they can begin implementing any rate increases while the department is reviewing them. If the department ultimately withholds approval carriers would need to dial back at that point, but sources said this good-faith system both empowers and incentivizes carriers to be judicious with the rates they file.

In California, on the other hand, carriers must wait for approval to start enacting the rates they've filed. They've long been calling for change to that system, with sources telling *Inside P&C* that [rate approvals are taking far too long](#) for that process to be useful for insurers.

It can take anywhere from 30 days to over a year, by which time economic factors such as inflation could render the increase inadequate anyways. Sources said this has pushed carriers in the Golden State to file for higher or more frequent rate increases to accommodate for that possibility.

Another advantage Texas has is in the way its residual market structures carrier contributions. As with other states, carriers must pay into Twia and, in the case of a massive loss, carriers are on the hook for assessment fees.

While California's Fair Plan determines a carrier's assessment based on their market share going back three years, a 2009 reform capped assessment at \$1bn across the private market. The assessment an individual carrier receives is determined by its size and the number of coastal policies it writes, but Texas carriers have a clear outer limit and therefore less of an incentive to reduce their market exposure.

Additionally, while the state does utilize a prior approval system for policy changes submitted by carriers, Floyd noted that the system allows carriers to make incremental changes to their exposure and coverage terms.

"One of the things that makes it difficult to commit to a high-risk environment is any statutory mechanism that says if you come into the marketplace and it turns out you're losing money at an alarming rate, you're not allowed to get out of that marketplace and you've got to keep losing money," said Floyd.

"We have been pretty disciplined in Texas about not creating those barriers to exit which, in practical terms, end up becoming barriers to entry."

Sources also pointed to Texas's quick-to-react legislature as another factor insulating insurers from market meltdowns.

Lawmakers were quick to react to a wave of bad faith claims put forward by roofing contractors after Hurricane Harvey devastated parts of Texas in 2017 ultimately causing an estimated \$20bn in insured losses.

House Bill 1774, which took effect in September 2017, prohibits a roofer or contractor from acting as a public insurance adjuster on insurance claims if they're also doing the work. They can't advertise that they would do so, either.

In Florida, insurers spent years and millions of dollars contending with bad faith practices on the part of contractors, yet it took legislators until 2022 to pass a similar law cracking down on the fraudulent assignment of benefits.

The 2017 law also took aim at frivolous lawsuits against carriers, following a series of damaging h
orms that prompted lawyers to file thousands of lawsuits alleging underpaid claims, by

requiring policyholders to notify carriers of their concerns and giving them the opportunity to address those issues without legal action.

"I think that the work we've done to protect insurers from such lawsuits has gone a long way towards making the Texas market a more friendly place to do business, and of course, that translates to lower premiums," Oliverson noted.

"You can't have an overly restrictive environment where it's essentially impossible for them to succeed. It just doesn't make sense for them to come into a marketplace like that."

Floyd lauded legislators for their "balanced tweaking" of existing statutes to promote policyholder and carrier interests.

"There are still tensions; I'm not asserting some kind of crazy nirvana here in that regard, but I think we do have pretty good communication between carriers, legislators and regulators, and good early warning systems."

Outlook

Ultimately, sources hailed Texas's regulatory and legislative systems for their flexibility towards carriers, saying that this framework preserves coverage in the long run.

"In Texas, we're trying to do things the right way and understand that we've got to provide coverage and protect policyholders, but also that we need to maintain a solid, competitive market to make sure we don't end up in a California situation," said Betts.

While carriers are undoubtedly tightening their belts, Betts said, he's also heard encouraging conversations.

"We're not hearing that companies are shying away from entering the Texas marketplace. In the last couple of weeks, I've heard that there are other companies looking to write business in Texas. That's anecdotal, but I think that's a good sign," he told *Inside P&C*.

"Things aren't easy right now, but companies are working with the regulator and they're navigating those challenges."

Topics

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Shelby Rosenberg

REPORTER



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Associated Case Party: TEXAS ASSOCIATION OF PUBLIC INSURANCE
ADJUSTERS

Name	BarNumber	Email	TimestampSubmitted	Status
Kelly Utsinger		kelly.utsinger@uwlaw.com	10/24/2023 2:45:58 PM	SENT