

ARTICLE 21.55 OF THE TEXAS INSURANCE CODE

Republic Underwriters Ins. Co. v. Mex-Tex, Inc.

The Texas Supreme Court recently reversed a controversial decision involving Article 21.55 of the Texas Insurance Code. Article 21.55 encourages insurers to make prompt payment of claims and imposes an 18% per annum penalty if the insurer delays payment.

The dispute in *Republic Underwriters Ins. Co. v. Mex-Tex, Inc.*, No. 03-0662 (Tex. November 19, 2004), arose out of a disagreement between the insurer and its insured over the cost to replace the insured's hail-damaged roof. The insurer tendered payment on the undisputed amount of the claim, \$145,460, which was later determined by the trial court to be insufficient. The trial court then assessed the 18% penalty against the full amount of the claim for \$179,000. The insurer appealed, arguing that the 18% penalty should only be assessed as to the disputed amount of the claim, since the insurer had made attempts to promptly tender the undisputed amount to the insured.

Analyzing the Article 21.55 definition of a "claim," the Texas Supreme Court determined that the inclusion of the phrase "that must be paid" limited the meaning of a "claim" to "the amount ultimately owed, which of course would be net of any partial payments made prior to that determination." The court found that this encourages insurers to pay the undisputed portion of the claim early.

The Court emphasized, however, that the tender of the partial payment must be "unconditional." The Court also recognized that the burden is on the insured to prove that the tender was conditioned on a full release. The Court held that the insured in *Tex-Mex* fell far short of this proof and, as a result, the 18% penalty would be assessed only as to the disputed amount and not against the full amount of the insured's claim.

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