

## In re State Farm Lloyds

Year: 2017

Court: Texas Supreme Court

Case Number: No. 15-0903

When homeowners file claims, insurance companies have a duty to conduct a prompt, reasonable investigation of the damage. When insurance companies fail to do so, they may be held accountable by law. They can be held accountable for the failure to investigate as well as any underpayment that may have resulted from the lackluster investigation. In proving these claims, homeowners need to examine the claim file and all the documents contained within it. Due to digitization, however, the claim file is not simply a paper file that can be handed over with relative ease. The claim file may in reality be a collection of documents in various places (emails/correspondence, adjuster's notes, damage reports, contractor's estimates, etc.) that are all relevant to how the claim was investigated and adjusted. Thus, when a homeowner requests in discovery the claim file, the insurance company must collect all relevant documents from whatever systems it uses and provide it to the homeowner. This evidence is relevant and sometimes essential to proving claims of bad faith, fraud, and failure to investigate, as made by the plaintiffs here. There is a nuance, however, that is critical: "Electronically Stored Information" is typically stored in native-form and as static images. Native-form documents include metadata, notes, etc. that are often relevant to, in the context of an insurance claim, the quality of the investigation and how claim settlement decisions were made. The static images, in contrast, do not contain this type of information - i.e., they are "scrubbed" of information that may be relevant in a lawsuit. Thus, a policyholder often requests the claim file, that is, all claim-related documents stored on whatever systems the insurance company uses, sometimes multiple systems, in their native form. Defendants often object to such discovery requests as overly burdensome and seek to fulfill their discovery obligations by providing static images of documents contained in one system, when in fact there may be relevant documents in another system, under the guise that they have provided documents that are "reasonably useable" to the plaintiff. UP reminded the Court that the Federal Rules of Evidence require that where a plaintiff requests native form, they are entitled to native form. UPdate March 9, 2017: The Texas Supreme Court refused to grant State Farm Lloyds' writ and established a multi-factor balancing test that provides policyholders



with a roadmap for obtaining this type of discovery.

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