

# Damages Under the Texas Insurance Code

How Did We Get Here?  
Where Are We Going?

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*Chitsey v. National Lloyds Ins. Co.*  
738 S.W.2d 641 (Tex. 1987)

- Indicates that where there is a breach of the insurance contract, damages due under the contract could be recovered under a tort theory or under a contract theory.

*Vail v. Texas Farm Bureau Mutual Ins. Co.*  
754 S.W.2d 129 (Tex. 1988)

- An insured who is wrongfully denied policy benefits may recover under the Insurance Code and need not show injury independent of policy benefits.

*Southwestern Bell Telephone Co. v. DeLanney*  
809 S.W.2d 493 (Tex. 1991)

- Pulls back from *Chitsey* and *Vail*, seems to urge damages are contractual in nature.

*Twin City Fire Ins. Co. v. Davis*  
904 S.W.2d 663 (Tex. 1995)

- Dissent urges that the case holds carrier's bad faith refusal to pay does not cause damage that supports a punitive award.

*Republic Ins. Co. v. Stoker*  
903 S.W.2d 338 (Tex. 1995)

- Generally, no claim for bad faith when insurer promptly denies claim that is not covered.
- BUT: Possibility that in denying, insurer does something so extreme it would cause injury independent of claim.

*Universal Life Ins. Co. v. Giles*  
950 S.W.2d 48 (Tex. 1997)

- Stringent standards for punitive damages – insurer actually aware that it would cause extraordinary harm, such as death, grievous physical injury, or financial ruin.

*Provident American Ins. Co. v. Castaneda*  
988 S.W. 2d 189 (1998)

- Imposed requirement of injuries independent from those resulting from denial of a claim.



*In re: Deepwater Horizon*  
*Cameron Int'l Corp. v. Liberty Ins. Underw. Inc.*  
807 F.3d 689 (U.S. App – 5<sup>th</sup> Cir. 2015)

- Certified Question to Texas Supreme Court

## Tex. Ins. Code Ann. - Ch. 541

- Authorizes private action against insurers to receive “actual damages” for unfair or deceptive acts or practices in business of insurance.

## *Cameron's Question:*

- If the only damage suffered is loss of policy benefits, can an insured maintain a claim under Tex. Ins. Code Ann. ch. 541?

If the Supreme Court reaffirms *Vail*, no additional damage need be shown and treble damages are possible.

Texas Supreme Court has not yet scheduled oral argument in this case.

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# Thank you.

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