



Menchaca – Rehearing and Unresolved Issues

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Menchaca I

- ▶ *USAA Texas Lloyds Co. v. Menchaca*, No. 14-0721 (April 7, 2017)
- ▶ Framed the issue as whether an insured can recover policy benefits when a jury finds the insurer violated the Insurance Code, and the violation resulted in a loss of benefits the insurer “should have paid” under the policy, even though the jury also failed to find the insurer breached the policy.

Menchaca I: Facts & Procedural History

- ▶ Homeowners' claim for damages from Hurricane Ike
- ▶ Adjuster investigated, concluded damage (\$700) did not exceed policy deductible (\$2,020)
- ▶ Second adjuster reached same conclusion
- ▶ Menchaca sued USAA for breach of policy and unfair settlement practices under Insurance Code
- ▶ Jury answered "no" to breach of policy question

Menchaca I

- ▶ Jury answered “yes” to Ins. Code question (violated duty to conduct reasonable investigation before denying claim)
- ▶ Awarded \$11,350 in damages (difference in sum USAA should have paid for property damage [“policy benefits”] and amount actually paid)
- ▶ Trial court set aside breach of contract answer and rendered judgment for Menchaca on Ins. Code claim.
- ▶ Court of Appeals affirmed; TSC granted review.

Menchaca I - Holding

- ▶ Supreme Court concluded that *Menchaca* could recover for statutory violations without finding of breach of contract. The court remanded the case back to the trial court, holding that while the jury held that USAA failed to conduct a reasonable investigation into a claim “it should have paid,” the trial court improperly ignored the jury’s answer to Question 1.

Menchaca I - Holding

- ▶ Court established five key rules : (1) the general rule; (2) the entitled-to-benefits rule; (3) the benefits-lost rule; (4) the independent injury rule; and (5) the no-recovery rule.
- ▶ USAA was not happy with decision, said it created more confusion, and moved for rehearing

Rehearing Granted

Menchaca II

APRIL 13, 2018

Menchaca II

- ▶ Court reaffirms the legal principles and rules announced in original opinion.
- ▶ Court disagrees on the procedural effect of those principles in this case.
 - ▶ “Because a majority of the Court agrees to reverse the court of appeals’ judgment and remand the case to the trial court for a new trial, our disposition remains the same.”

Menchaca II: The Five Rules

- ▶ 1. General Rule: Insured cannot get policy benefits as actual damages for a statutory violation in the absence of a contractual right to receive benefits.
 - ▶ Derives from fact that Insurance Code only allows Insured to recover actual damages “caused by” Insurer’s statutory violation. Tex. Ins. Code §541.151.
 - ▶ *Stoker* (Tex. 1995): There can be no bad faith [denial of an insured’s claim for policy benefits] when Insurer has promptly denied a claim that is, in fact, not covered.
 - ▶ *Castañeda* (Tex. 1998): Plaintiff asserted Ins. Code violation and sought “equivalent” policy benefits. Failure to properly investigate is not a basis for obtaining policy benefits.

Menchaca II: The Five Rules

- ▶ 2. Entitled-to-Benefits Rule: If insured proves a right to policy benefits, it can recover those as actual damages if the Ins. Code violation causes loss of those benefits
 - ▶ *Vail* (Tex. 1988): Insurer's unfair refusal to pay the Insured's claim causes damages as a matter of law in at least the amount of the policy benefits wrongfully withheld.
 - ▶ Ins. Code remedies are cumulative of other remedies; Insured can elect to recover the benefits under the statute, even though also could have asserted breach of contract claim.
 - ▶ *Vail* not rejected in *Stoker* (Tex. 1995) or *Castañeda* (Tex. 1998)

Menchaca II: The Five Rules

- ▶ 3. Benefits-Lost Rule: If the Insured cannot prove a present right to policy benefits, it still can recover those as actual damages under the Ins. Code if the statutory violation caused the Insured to lose that right
 - ▶ Misrepresentation (that policy provides coverage it does not in fact provide) can give rise to liability under statute for those benefits, if the Insured is adversely affected or injured by reliance on the misrepresentation
 - ▶ Example: representing policy provides pregnancy coverage when it does not

Menchaca II: The Five Rules

- ▶ 4. Independent-Injury Rule: Insurer's extra-contractual liability is "distinct" from its liability for benefits under the insurance policy
- ▶ *Stoker*: "we do not exclude ... possibility that in denying the claim, the insurer may commit some act, so extreme, that would cause injury independent of the policy claim."
- ▶ If the Insurer's statutory violation causes injury independent of the Insured's right to recover policy benefits, the Insured may recover damages for that injury, even if the policy does not entitle the Insured to receive benefits.
- ▶ Insurer's statutory violation does not permit the Insured to recover any damages beyond policy benefits unless violation causes injury independent from loss of benefits.
- ▶ "Rare" "we have yet to encounter one" -- Court would not speculate what would constitute a recoverable independent injury.

Menchaca II: The Five Rules

- ▶ 5. No-Recovery Rule: Insured cannot recover any damages for an Ins. Code violation unless the Insured establishes a right to receive policy benefits or an injury independent of a right to receive benefits
 - ▶ This is “simply the natural corollary to the first four rules”
 - ▶ Citing to *Castañeda* and courts of appeals cases

Menchaca II: Rehearing Issues Addressed

- ▶ USAA argued: Because Menchaca did not prevail on breach of contract, she cannot recover policy benefits for a statutory violation. Apply General Rule (Rule 1)
- ▶ Menchaca argued: Because USAA violated statutory obligation and failed to pay benefits she was entitled to, Menchaca's recovery independent of breach of contract claim. Apply Entitled-to-Benefits Rule (Rule 2)

Menchaca II: Rehearing Issues Addressed

- ▶ Court rejected USAA's argument: insured need not prevail on separate breach of contract claim to recover policy benefits for statutory violation, applying "Entitled to Benefits" Rule (Rule 2). *Vail* allows insured to elect to recover benefits under statute instead of contract.
- ▶ Court rejected Menchaca's argument: "Entitled to Benefits" Rule allows insured policy benefits the insurer "should have paid." But, jury's finding that USAA did not fail to comply with policy means there were no benefits that USAA "should have paid," applying General Rule (Rule 1) and No-Recovery Rule (Rule 5)
- ▶ Jury's answers in fatal conflict
- ▶ Error not preserved – neither side objected to conflicting answers
- ▶ Remand in interest of justice

Menchaca II: Summary

- ▶ Plurality (Justice Boyd): rejected USAA's argument that it was entitled to judgment because the jury found that USAA did not breach the policy. Insured is not required to separately prevail on breach of contract. But, conflict between the jury's answers to Question 1 and answers to Questions 2&3 should not have been ignored by trial court.
- ▶ Justice Hecht (Concurring): concurs with five key rules; joins dissenting opinion as to how those rules applied to Menchaca. J. Hecht would remand because a new trial is required to correct the trial court's error.
- ▶ Justices Green, Guzman, and Brown (concur with five key rules but dissent to result): Judgment should be rendered in USAA's favor because Menchaca failed to sustain her burden to prove that she was entitled to policy benefits (Question 1)

Menchaca II: Unresolved Issues – Appraisal

- ▶ Bulk of post-*Menchaca II* litigation has been in appraisal context
- ▶ Typical scenario: Insurer and insured dispute amount of loss; one or both parties invoke appraisal provision of insurance contract. Unsatisfied insureds sue insurer, asserting breach of contract and extra-contractual claims
- ▶ Insurer pays appraisal award, then moves for summary judgment, asserting that payment of appraisal award extinguishes contractual and extra-contractual claims

Menchaca II: Appraisal Disputes

- ▶ Courts long recognized that insurer's payment and insured's acceptance of appraisal award estopped the insured from prevailing on breach of contract or extra-contractual claims, unless the insured could show independent injury
- ▶ E.g. **Ortiz v. State Farm Lloyds**, No. 04-17-00252-CV, 2017 WL 5162315, at *1 (Tex. App.—San Antonio Nov. 8, 2017, pet. granted); *Braden v. Allstate Vehicle and Prop. Ins. Co.*, 2019 WL 201942 (N.D. Tex. 2019); *Hinojos v. State Farm Lloyds*, 2019 WL 257883 (Tex. App.—El Paso 2019, no pet. h.); *Byrd v. Liberty Ins. Corp.*, 2018 WL 7021591 (S.D. Tex. 2018)

Menchaca II: Appraisal Disputes

- ▶ State Farm denied payment for Ortiz's claim for wind and hailstorm damage to home; inspection showed damage less than deductible
- ▶ Ortiz sued, asserting contractual and extra-contractual claims; State Farm invokes appraisal provision. Appraisal awarded: \$9.5k, State Farm paid Ortiz \$4200, representing actual cost value minus deductible and depreciation
- ▶ T/c granted summary judgment on State Farm's assertion that payment of appraisal estopped Ortiz from pursuing contract or extra-contractual claims
- ▶ COA affirmed

Menchaca II: Appraisal Disputes

- ▶ Texas Supreme Court granted review; oral argument held on 2/20/2019
- ▶ Ortiz's argument: denial of common-law or statutory claims after appraisal award means Ortiz better off not pursuing claims because can't recover costs, attorney's fees, etc. after State Farm invoked appraisal provision
- ▶ Ortiz says *Menchaca* changed rule that, absent a breach of contract claim, no other causes of action survive.
- ▶ State Farm: Precedent is uniform: payment of appraisal award is payment of all benefits to which the insured is entitled.

Menchaca II: Appraisal Disputes

- ▶ *Ortiz* oral argument:
- ▶ Justices inquire about appraisal's purpose in saving time, and even if insured has to pay extra fees/costs associated with appraisal, may be balanced by fact that insurer is giving up some defenses during appraisal
- ▶ Also inquire as to whether damages have to be independent from appraisal and whether question of coverage is resolved when either party invokes appraisal
- ▶ Court wants to know impact of *Menchaca*; Also seem a bit concerned about impact on small claims

Menchaca II: Appraisal Disputes

- ▶ Companion case: *Barbara Techs. Corp. v. State Farm Lloyds*, 566 S.W.3d 294, 296 (Tex. App.—San Antonio 2017, pet. granted)
- ▶ Same type of appraisal issues but involves whether Prompt Payment claims are barred once appraisal is timely paid
- ▶ COA held that summary judgment on Prompt Payment claims proper where insurer timely paid appraisal award

Menchaca II: UM/UIM Cases

- ▶ “the UIM insurer is under no contractual duty to pay benefits until the insured obtains a judgment establishing the liability and underinsured status of the other motorist.” *Brainard v. Trinity Universal Ins. Co.*, 216 S.W.3d 809, 818 (Tex. 2006)
- ▶ Insureds now arguing that *Menchaca* changes the landscape because insureds don’t need breach of contract finding to pursue statutory claims
- ▶ So far, courts have rejected this argument. *E.g. In re State Farm Mut. Auto. Ins. Co.*, 553 S.W.3d 557, 559 (Tex. App.—San Antonio 2018, no pet.).

Menchaca II: Other Cases

- ▶ *Lyda Swinerton Builders, Inc. v. Oklahoma Sur. Co.*, 903 F.3d 435, 450-53 (5th Cir. 2018)
- ▶ General contractor (LSB) sought recovery for extra-contractual damages from subcontractor's insurer
- ▶ COA affirmed t/c's judgments that insurer breached duty to defend and violated prompt payment statute
- ▶ LSB sought reversal of t/c's ruling denying claim for extra-contractual damages under Chapter 541
- ▶ Application of *Menchaca* Rule 2

Menchaca II: Other Cases

- ▶ *Wall v. State Farm Lloyds*, No. 01-17-00681-CV, 2018 WL 6843781, at *4 (Tex. App.—Houston [1st Dist.] Dec. 31, 2018, no pet.)
- ▶ Breach of contract jury question may be unnecessary, but language of jury questions important
- ▶ Jury answered “No” question on whether State Farm breached policy, but “Yes” to question on whether State Farm engaged in unfair or deceptive practices; Trial court rendered take-nothing judgment against insureds
- ▶ COA: Under *Menchaca*, while the jury’s “No” answer did not defeat the Walls’s statutory claims, the jury’s answer to Insurance Code violation question did not support judgment for the Walls

Menchaca II: Possible Independent Injury?

- ▶ *Great Am. Ins. Co. v. AFS/IBEX Fin. Services, Inc.*, 612 F.3d 800, 808 (5th Cir. 2010)
- ▶ Premium finance company (AFS) sought coverage under crime protection policies issued by Great American after AFS suffered loss caused by check forgery; Great American denied coverage.
- ▶ District court concluded coverage existed, but later dismissed extra-contractual damage claims, because AFS's damages all potentially flowed from GAIC's breach of its insurance contract.
- ▶ Fifth Circuit reverses on the extra-contractual claims issue; suggests that attorney's fees in related lawsuit might provide the separate injury necessary to recover for extra-contractual damages.

Thank You!

