

Texas Supreme Court: A Fence Can Be Considered a Dwelling

Relying on specific language in a Texas standard homeowner's policy, the Texas Supreme Court recently determined that a homeowner's fence was considered a dwelling because it was connected to the residence premises and the term "structure" was not defined in the policy.

In *Nassar v. Lib. Mut. Fire Ins.*, 60 Tex. Sup. J. 309 (Tex. 2017), policyholders, Elie and Rhonda Nassar owned six acres of property in Richmond, Texas that contained barns, outbuildings and fencing as well as their primary residence. In the aftermath of Hurricane Ike in September 2008, the Nassars' filed a claim under their homeowner's policy issued by Liberty Mutual. The policy provided "dwelling" coverage with a limit of liability of \$247,200 and "other structures" coverage with a 10% sublimit of liability of \$24,720.

After the impact of Hurricane Ike, the Nassars reported fencing damage in the amount of \$58,665 and Liberty issued a payment to the Nassars in the amount of the lower \$24,720 sublimit. In doing so, Liberty concluded that the Nassars' fencing system was an "other structure" as opposed to a "dwelling" and therefore subject to the lower policy limit. The Texas Supreme Court disagreed and determined that the 4,000-foot fencing system was part of the dwelling.

In its reasoning, the Court relied on the policy's "dwelling" insuring agreement which covered "the dwelling on the residence premises shown on the declarations page including structures attached to the dwelling." In doing so, the Court differentiated the "other structures" coverage that provided separate cover and a 10% sublimit for loss to "other structures on the residence premises set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line or similar connection." Because the fencing structure was bolted to the residence in four places and, notably, because the policy specifically did not define the term "structure," the Court determined that a plain reading of the policy language provided that the fencing structure was part of the dwelling and therefore subject to the higher policy limit.

The case, *Nassar v. Liberty Mut. Fire Ins. Co.*, 60 Tex. Sup. J. 309 (Tex. 2017), can be found here: <http://caselaw.findlaw.com/tx-supreme-court/1768628.html>.