

**Affirmed in Part, Reversed and Remanded in Part, and Memorandum Opinion
filed August 7, 2025**



In The

Fourteenth Court of Appeals

NO. 14-24-00147-CV

KELLY MALLADY, Appellant

V.

HOMEOWNERS OF AMERICA INSURANCE COMPANY, Appellee

**On Appeal from the County Civil Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 1180192**

MEMORANDUM OPINION

This case involves a first-party insurance dispute between Kelly Mallady and Homeowners of America Insurance Company. Mallady sued Homeowners of America for damages she allegedly sustained from a nearby explosion in January 2020. Mallady appeals the trial court's grant of summary judgment in favor of Homeowners of America. As presented, Mallady raises eight issues on appeal, arguing, among other things, that the trial court erred in granting summary judgment.

For the reasons explained below, we affirm in part and reverse and remand in part.

Background

Mallady purchased a homeowners insurance policy from Homeowners of America to cover the property located at 10321 Bell Gardens Drive, Houston, Texas 77041. The twelve-month policy was effective September 15, 2019 and expired on September 15, 2020. She made a claim on January 24, 2020, alleging blast-related damages to her property and contents from the Watson Grinding & Manufacturing Company explosion. Homeowners of America acknowledged the claim in writing and arranged for inspection. Homeowners of America sent Mallady a letter on February 3, 2020, explaining its decision on her claim. The independent adjuster estimated the property damage to be \$13,014.79. The estimate covered damages to the dwelling and fence only. After deducting the policy deductible, Mallady received a net payment of \$10,656.79.

Mallady consulted with a contractor to inspect the damage to her property. The inspector employed by Mallady estimated the property damage to be \$104,093.04. After receiving the estimate from Mallady's contractor, an independent adjuster re-inspected Mallady's property and estimated the property damage to be \$53,059.45. After deducting the policy deductible, prior payment, and recoverable depreciation, Mallady received a net payment of \$25,889.90. In total, Homeowners of America paid Mallady \$36,546.69 for damages to her dwelling and fence resulting from the explosion.

On July 9, 2020, Mallady notified Homeowners of America that she was invoking appraisal, explaining the independent adjuster did not perform an adequate inspection of the property. Mallady demanded \$247,860.40 for the recoverable cost value for damages to her property and contents, as well as \$10,000 in attorney's fees and costs. Per the conditions of the policy, she designated Ray Choate as her

appraiser. Homeowners of America responded to Mallady's demand letter on July 9. It rejected her demand for payment and designated Kevin B. Hromas as its appraiser. The two inspectors designated William McLeod as the umpire. McLeod issued an appraisal award on April 6, 2021 (the "April award"). Under this award, the amount of loss for the dwelling was set at \$24,000 replacement cost value and \$21,900 actual cash value. The award did not address Mallady's claim relating to damages to her contents. McLeod signed the award with his electronic signature and emailed the signed award to Choate and Hromas at 8:35 p.m. Unbeknownst to Choate and McLeod, Hromas printed the award and signed it moments after receiving it. Later that evening at 9:24 p.m., Choate emailed McLeod the following:

Bill,

Attached is an estimate from the carrier totaling over \$50k, how in the world could you rule half of what the insurance company already paid? I don't even know what to think right now.

McLeod emailed the following response at 9:43 p.m.:

I will adjust the award therefore the award sent on 4/6/21 @ 8:35 pm is being resended [sic] and VOIDED a new award will be issued after further investigation on this file as needed.

The April award was voided, and a subsequent appraisal award was issued on June 8, 2021 (the "June award"). This time, McLeod assessed Mallady's damages at \$215,616.65 and \$145,778.70 actual cash value. This award covered damages for the dwelling, fence, and contents, among other things.

On June 11, 2021, Homeowners of America requested Mallady to submit to an examination under oath. Homeowners of America identified Choate as Mallady's "representative" and requested that he submit to an examination under oath as well. Homeowners of America also requested relevant documents to evaluate the claim, such as documents supportive of claimed and covered damage, documents reflecting

ownership and possession of personalty claimed as damaged, and documents relied on by Choate when making estimates related to the claim. Mallady's examination was scheduled for June 29, and Choate's examination was scheduled for July 9. On July 13, Homeowners of America sent Mallady a letter, stating that neither she nor Choate appeared for examination or provided the requested documentation. Mallady's and Choate's examinations were rescheduled for July 27 and July 29, respectively. Homeowners of America again requested relevant documents to evaluate the claim. Mallady's examination was ultimately completed on October 22. Choate never appeared for his examination.

Mallady filed suit on January 12, 2022, alleging, among other things, Homeowners of America failed to perform its contractual duty to adequately compensate her under the terms of the policy, failed to make an attempt to settle her claim in a fair manner, and failed to affirm or deny coverage of her claim within a reasonable time. Mallady asserted seven causes of action: breach and anticipatory breach of contract, breach of the common law duty of good faith and fair dealing, deceptive trade practices and unconscionable conduct, violations of Chapter 542 of the Insurance Code (Texas Prompt Payment of Claims Act), violations of Chapter 541 of the Insurance Code (unfair insurance practices), fraud, and ongoing conspiracy to commit illegal acts.

On August 22, 2023, Homeowners of America filed a motion to set aside the June award and confirm the April award, arguing McLeod lacked authority to rescind or otherwise void the April award. Homeowners of America insisted "a binding award issued the moment Mr. Hromas signed the award." The trial court signed an order on September 21, 2023, setting aside the June award and confirming the April award. Homeowners of America subsequently filed a combined traditional and no-evidence motion for summary judgment on November 15, 2023, which was

granted by the trial court on February 7, 2024. This appeal followed.

Issues Presented

As presented, Mallady raises eight issues for review:

1. Whether mental health injuries are independent injuries that support extra-contractual claims even in the absence of a viable breach of contract claim?
2. Whether an appraiser with a history of bias in other cases qualifies to sit as an appraiser in this case?
3. Whether a corrected appraisal award is enforceable?
4. Whether an umpire has the power to correct an appraisal award?
5. Whether a provision in an insurance policy requiring “representatives” of a party to submit to an examination under oath applies to appraisers?
6. Whether an attorney who testifies about a contested issue in an affidavit should be disqualified from representing a party in the same litigation?
7. Whether summary judgment is appropriate where an insurer has paid the entire original appraisal award but not the corrected one?
8. Whether attorney’s fees and psychological injuries prevent summary judgment on breach of contract and extra-contractual claims?

We begin our analysis by considering the issues related to Mallady’s breach of contract claim—issues three, four, and seven. We will then turn to the issues related to Mallady’s extra-contractual claims—issues one and eight. Finally, we address issue five, concerning Choate submitting to an examination under oath. Because we sustain several of Mallady’s issues involving the trial court’s grant of summary judgment, we do not reach issues two and six. *See* Tex. R. App. P. 47.1.

Summary Judgment

In its combined summary judgment motion, Homeowners of America alleged it was entitled to a no-evidence summary judgment on Mallady’s breach of contract claim, generally challenging the lack of evidence to support causation and damages.

Homeowners of America also asserted it was entitled to summary judgment on traditional grounds on each of Mallady's claims because it paid the appraisal award in full, and Mallady did not plead an independent injury to support her extra-contractual claims. Mallady responded summary judgment was not proper because fact issues remained. She argued, among other things, Homeowners of America failed to fulfill its contractual obligations and that she sustained "unquantifiable emotional distress and mental anguish" from Homeowners of America's "callous mistreatment." The trial court granted the summary judgment, stating the order "resolve[d] the claims of all parties." On appeal, Mallady challenges the trial court's grant of summary judgment, primarily arguing the April award did not cover contents and that she sustained independent injuries separate from her contract claim.

I. Standards of Review

We review both traditional and no-evidence summary judgments de novo. *See Boerjan v. Rodriguez*, 436 S.W.3d 307, 310 (Tex. 2014) (per curiam). Where, as here, a successful movant sought both no-evidence and traditional summary judgment, and the record does not reveal the grounds on which the trial court granted judgment, we review the no-evidence grounds first. *See Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). If the nonmovant fails to meet its burden under the no-evidence motion, there is no need to address the challenge to the traditional motion as it necessarily fails. *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013).

In a no-evidence motion for summary judgment, the movant asserts that there is no evidence of one or more essential elements of the claim or defense for which the nonmovant bears the burden of proof at trial. Tex. R. Civ. P. 166a(i); *see Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009). The burden then shifts to the

nonmovant to present evidence raising a genuine issue of material fact as to the elements specified in the motion. *See Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). The evidence does not create an issue of material fact if it is “so weak as to do no more than create a mere surmise or suspicion” that the fact exists. *Kia Motors Corp. v. Ruiz*, 432 S.W.3d 865, 875 (Tex. 2014) (quoting *Ridgway*, 135 S.W.3d at 601). We will affirm a no-evidence summary judgment when (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact. *See City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005).

Claims that survive the no-evidence review will then be reviewed under the traditional standard. *First United Pentecostal Church of Beaumont, d/b/a the Anchor of Beaumont v. Parker*, 514 S.W.3d 214, 219–20 (Tex. 2017). A party moving for traditional summary judgment must demonstrate that “there is no genuine issue as to any material fact” and that it is “entitled to judgment as a matter of law.” Tex. R. Civ. P. 166a(c); *see also Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009).

II. Breach of Contract (Issues Three, Four, and Seven)

In her third and fourth issues, Mallady contends McLeod had the authority to correct the appraisal award, and therefore, the June award was enforceable because it was signed by McLeod and Choate. As her seventh issue, Mallady alleges, without much analysis, the trial court erred in granting summary judgment because Homeowners of America did not pay the June award. While Mallady’s argument is not entirely clear, we interpret these issues as challenging the trial court’s order to

set aside the June award and grant of Homeowners of America's no-evidence summary judgment on her breach of contract claim. For the reasons explained below, we conclude the trial court did not abuse its discretion in setting aside the June award but did err in granting summary judgment on Mallady's breach of contract claim.

Appraisal clauses appear in almost every homeowner, property, or automobile insurance policy in Texas. *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 889 (Tex. 2009); *see also In re Universal Underwriters of Tex. Ins. Co.*, 345 S.W.3d 404, 406–07 (Tex. 2011). From a policy point of view, appraisal clauses allow the insured and insurer to resolve disputes about damages with greater efficiency by eliminating the cost and delay of traditional litigation. *Universal Underwriters*, 345 S.W.3d at 407. It is well-established that appraisal awards made under the provisions of an insurance contract are binding and enforceable, and we indulge every reasonable presumption to sustain an appraisal award. *Franco v. Slavonic Mut. Fire Ins. Ass'n*, 154 S.W.3d 777, 786 (Tex. App.—Houston [14th Dist.] 2004, no pet.). An otherwise binding appraisal award may be set aside when (1) the award was made without authorization; (2) it was the result of fraud, accident or mistake; or (3) it failed to comply with the requirements of the insurance policy. *See Nat'l Sec. Fire & Cas. Co. v. Hurst*, 523 S.W.3d 840, 844 (Tex. App.—Houston [14th Dist.] 2017, pet. denied); *Franco*, 154 S.W.3d at 786.

Appraisal clauses estop a party from contesting the issue of damages in a lawsuit based on an insurance contract. *Nat'l Sec. Fire & Cas. Co. v. Hurst*, 523 S.W.3d 840, 844 (Tex. App.—Houston [14th Dist.] 2017, pet. filed). If a party seeks to avoid an appraisal award, the burden of proof is theirs to raise an issue of material fact as to why the resolution they contractually agreed to should be set aside. *See Hurst*, 523 S.W.3d at 844; *Lundstrom v. United Servs. Auto Ass'n-CIC*, 192 S.W.3d 78, 87 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). If the appraisal award

is not set aside, this contractual process settles the issue of damages, and settlement of the full amount owed estops the insured from bringing a breach of contract claim against the insurer. *Franco*, 154 S.W.3d at 787.

Here, the evidence shows Homeowners of America, prior to Mallady invoking appraisal, made two payments on Mallady's claim, totaling \$36,455.69. The evidence also establishes McLeod issued the April award, assessing damages only for the dwelling at \$24,000 replacement cost value and \$21,900 actual cash value. McLeod signed the award and emailed it to Choate and Hromas at 8:35 p.m. on April 6, 2021. According to Hromas, he "printed it out and signed it." Thus, the evidence establishes this award was signed by McLeod and Hromas. Later that evening, Choate challenged the award, arguing it was less than half of what Homeowners of America had already paid on the claim. Unaware Hromas had already signed the award, McLeod purportedly "voided" the April award until further investigation. He later issued the June award, which was signed by him and Choate. Under this award, damages were assessed at \$215,616.65 and \$145,778.70 actual cash value and covered, among other things, the dwelling, fence, and contents.

Homeowners of America filed a motion to set aside the June award and confirm the April award. In its motion, Homeowners of America argued, among other things, that the June award was issued without authority because the April award had previously issued and was executed by Hromas and McLeod—two of the three parties needed to make the award binding. In her response, Mallady did not address the enforceability of the April award, instead arguing the June award was the only award "issued by the indisputably properly-appointed umpire."

Reviewing the record, we cannot say the trial court abused its discretion in setting aside the June award and confirming the April award because Homeowners

of America, as the party seeking to avoid the June award, established the award was made without authority. *See Lundstrom*, 192 S.W.3d at 87. Specifically, Homeowners of America produced the April award signed by McLeod and Hromas. And as mandated by the policy, an award agreed to by any two of the three parties (the umpire and the parties' appraisers) sets the amount of loss and is binding. *See Franco*, 154 S.W.3d at 786 (“[A]ppraisal awards made pursuant to the provisions of an insurance contract are binding and enforceable.”). Once binding, McLeod lacked authority to “void” or otherwise “correct” the award, absent the award being set aside for one of the three circumstances recognized by Texas courts. *Id.* As a binding award, the April award set the amount of loss for the dwelling.

The April award set the replacement cost at \$24,000 and the actual cash value at \$21,900. Prior to this award, Homeowners of America paid \$36,546.69 for damages to the dwelling and fence. Homeowners of America alleged this payment settled the full amount owed under the April award and estopped Mallady from bringing a breach of contract claim on the issue of damages to the dwelling. *See Hurst*, 523 S.W.3d at 844 (“If the appraisal award is not set aside, this contractual process settles the issue of damages, and settlement of the full amount owed estops the insured from bringing a breach of contract claim against the insurer.”). In this respect, the trial court did not err in granting summary judgment on Mallady’s breach of contract claim because Mallady failed to raise a fact issue. *See Mack Trucks*, 206 S.W.3d at 582.

Nevertheless, when Mallady invoked appraisal, she also claimed damages to her contents. The April award, however, did not set the amount of loss for contents; it only covered damages to the dwelling. *See Ortiz*, 589 S.W.3d at 131–32 (noting appraisal awards bind parties to the amount of loss determined in a particular way). Although Homeowners of America claims that their total payments have resolved

Mallady's entire claim, we will not attempt to speculate on the amount of loss for Mallady's contents claim. The April award is binding only as it relates to Mallady's damages to her dwelling. The record shows that content damages were to be addressed in a separate award after inspection of the property. Indeed, McCleod's email to Choate and Hromas specifically stated

Please find attached the Executed on April 6, 2021 Umpire Award regarding the Dwelling Coverage for 10321 Bell Gardens Dr., Houston Texas 77041.

Ray, Please share some dates that you want to meet at the property owners home given you would have to come from out of town . . . OR . . . if you do not feel that you need to attend the inspection please send me the Contact information for the Home owner, Ms. Mallady and I will get dates that she would be available for an inspection to do a separate award for the Contains.

Mallady therefore has presented evidence raising a genuine issue of material fact that she suffered damages, aside from those covered in the April award, because of Homeowners of America's alleged breach.

Having survived the no-evidence summary judgment, Homeowners of America was required to demonstrate it was entitled to judgment as a matter of law. *See* Tex. R. Civ. P. 166a(c); *Parker*, 514 S.W.3d at 219–20. As explained, Homeowners of America has not satisfied this burden because there is evidence that the April award only covered damages to the dwelling, and the parties intended to address Mallady's entitlement to damages for contents in a separate award. We therefore conclude the trial court erred in granting summary judgment on Mallady's breach of contract claim. *See Fielding*, 289 S.W.3d at 848.

Accordingly, we overrule issue seven, which concerns Homeowners of America's alleged failure to pay the June award. We sustain issues three and four, which relate to the enforceability of the June award, but only to the extent that

Mallady's claim for content damages was not resolved by the April award.

III. Extra-contractual Claims (Issues One and Eight)

Under her first and eighth issues, Mallady alleges summary judgment was not proper because “mental health consequences,” “psychological injuries,” and attorney’s fees are independent injuries that support her extra-contractual claims. Homeowners of America claims Mallady failed to differentiate between mental anguish damages attributable to the explosion from damages attributable to Homeowners of America’s alleged non-payment of her claim.

An insured’s claim for breach of an insurance contract is “distinct” and “independent” from claims that the insurer violated its extra-contractual common-law and statutory duties. *See USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 489 (Tex. 2018). A claim for breach of the policy is a “contract cause of action,” while a common-law or statutory bad-faith claim “is a cause of action that sounds in tort.” *Id.* (citing *Twin City Fire Ins. Co. v. Davis*, 904 S.W.2d 663, 666 (Tex. 1995)). In *Menchaca*, the Texas Supreme Court announced “five distinct but interrelated rules that govern the relationship between contractual and extra-contractual claims in the insurance context.” 545 S.W.3d at 489.

One of these rules is the “independent-injury rule.” The first aspect of the independent-injury rule “is that, if an insurer’s statutory violation causes an 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.” *Id.*; *see also State Farm Lloyds v. Fuentes*, 597 S.W.3d 925, 940 (Tex. App.—Houston [14th Dist.] 2020, no pet.). “The second aspect of the independent-injury rule is that an insurer’s statutory violation does not permit the insured to recover any damages beyond policy benefits unless the violation causes an injury

that is independent from the loss of the benefits.” *Menchaca*, 545 S.W.3d at 500. Although the *Menchaca* court had “yet to encounter” a successful independent-injury claim and did not “have . . . occasion to speculate what would constitute a recoverable independent injury,” it did not foreclose the possibility of recovery for mental anguish damages as an independent injury. *Id.* at 499–500; *see also Fuentes*, 597 S.W.3d at 941.

Here, Mallady alleges she suffered mental anguish from Homeowner of America’s refusal to compensate her. To support her extra-contractual claim, she relies on an assessment report prepared by a licensed therapist and her own affidavit to support her independent injury claim. In the report, Mallady was diagnosed with post-traumatic stress disorder, unspecified insomnia disorder, unspecified depressive disorder, and generalized anxiety disorder. The report identified the explosion as a stressor, but the report also noted that Mallady suffered from social and physical anxiety and depression prior to the explosion.

Mallady also relies on her own affidavit to support her independent injury claim. But the assertions in her affidavit establish that the mental anguish damages she seeks to recover “are predicated on,” “flow from,” or “stem from” the loss being covered under the insurance policy. *See Menchaca*, 545 S.W.3d at 500. Indeed, Mallady claimed that Homeowners of America’s “highhanded mistreatment, dishonest and fraudulent denial of owed coverage has produced crushing independent injuries.” The independent-injury rule permits the recovery of damages that are “truly independent of the insured’s right to receive policy benefits.” *Id.* at 499–500. Although there may be certain circumstances in which mental anguish could qualify as an independent injury to support an extra-contractual claim, such circumstances are not present in this case because the evidence cited by Mallady establishes her mental anguish stems from the denial of policy benefits. *See*

Menchaca, 545 S.W.3d at 500; *Fuentes*, 597 S.W.3d at 941.

To the extent Mallady contends the attorney’s fees she incurred are independent damages, she has not identified the basis of recovery. *See Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006); *see also Trevino v. City of Pearland*, 531 S.W.3d 290 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (“A party may recover attorney’s fees only when permitted by statute or contract.”). Texas law is clear that attorney’s fees incurred in the prosecution or defense of a claim are not damages. *See Ortiz v. State Farm Lloyds*, 589 S.W.3d 127, 135 (Tex. 2019) (citing *In re Nalle Plastics Fam. Ltd. P’ship*, 406 S.W.3d 168, 173 (Tex. 2013)).

We therefore overrule Mallady’s first and eighth issues.

Examination Under Oath

As her fifth issue, Mallady alleges the trial court abused its discretion in requiring Choate to submit to an examination under oath. In the underlying suit, Homeowners of America moved to compel the production of Choate for an examination under oath, alleging it made six requests before Mallady filed suit, yet Choate had not appeared. Mallady responded Choate was not her “representative”; therefore, she was not contractually obligated to produce him for an examination under oath. The trial court signed an order to compel, ordering Mallady to comply with her policy and present Choate for examination.

We will reverse a trial court’s ruling on a motion to compel only when the court acts in an arbitrary and unreasonable manner, without reference to any guiding principles. *See generally Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991); *Downer*, 701 S.W.2d at 241–42 (Tex. 1985).

Generally, insurance policy provisions requiring the insured's submission to an examination under oath as a condition precedent to sustaining a suit on the policy are valid. *See Lidawi v. Progressive Cty. Mut. Ins. Co.*, 112 S.W.3d 725, 734 (Tex. App.—Houston [14th Dist.] 2003, no pet.). The conditions under which an insurance company may conduct an examination under oath are governed by the insurance policy. *See Trahan v. Fire Ins. Exch.*, 179 S.W.3d 669, 673–674 (Tex. App.—Beaumont 2005, no pet.). The principles courts use when interpreting an insurance policy are well-established. *See Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 126 (Tex. 2010). We examine the language of the policy because we presume parties intend what the words of their contract say, and we review the entire agreement and seek to harmonize and give effect to all provisions so that none will be meaningless. *Id.* Courts strive to honor the parties' agreement and not remake their contract by reading additional provisions into it. *Id.*; *see also Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Crocker*, 246 S.W.3d 603, 606 (Tex. 2008).

The policy at issue describes certain duties that must be performed before coverage is provided. Specifically, the policy provides that the insured or a representative thereof must “[s]ubmit to an examination under oath . . . and sign the same.” We therefore must determine if the parties intended for their chosen appraisers to serve as their “representative” as contemplated in the policy. *See Gilbert*, 327 S.W.3d at 126. We note the term “representative” is not defined, even though the policy provides an example, i.e., a public adjuster engaged or retained.

When policy terms are not defined, we must give the terms their plain, ordinary, and generally accepted meaning. *See Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 746 n.8 (Tex. 2006). According to Black's Law Dictionary, a representative is someone who stands for or acts on behalf of another.

Representative, Black’s Law Dictionary (12th ed. 2024). With this definition in mind and reviewing the policy language, the appraisers are not representatives of the parties. We reach this conclusion for two reasons. First, the policy required the appraiser to be “independent, impartial, and disinterested.” This requirement conflicts with the definition of a representative. *See id.* Second, the policy states that

[y]ou, we, and each of our representatives shall cooperate with the appraisal process, provide the appraisers and umpire with existing repair bids, estimates, invoices, receipts, expense records, inventories, and photos which are reasonably requested, and allow the appraisers and umpire reasonable and timely access to inspect the damaged property.

This language suggests that the parties did not intend for their appraisers to also be their representatives. If we interpreted the policy otherwise, it would render the requirement to provide the appraisers with the aforementioned documents or that the appraisers be “disinterested,” meaningless. *See Gilbert*, 327 S.W.3d at 126.

Accordingly, we conclude the trial court erred in granting Homeowner of America’s motion to compel the examination of Choate because the policy does not require it. *See Trahan*, 179 S.W.3d at 673–674. We sustain Mallady’s fifth issue.

Having sustained several of Mallady’s issues challenging the trial court’s grant of summary judgment, we do not reach the merits of issues two (admissibility of Hromas’s testimony) and six (disqualification of Homeowners of America’s counsel). *See Tex. R. App. P. 47.1.*

Conclusion

We affirm the trial court’s grant of summary judgment on Mallady’s extra-contractual claims because Mallady failed to raise a genuine issue of material fact. However, we reverse the trial court’s grant of summary judgment on Mallady’s

breach of contract claim only to the extent the April award did not set the amount of loss for contents. Additionally, we vacate the trial court's order requiring Choate to submit to an examination under oath. We remand the case to the trial court for further proceedings in accordance with this opinion.

/s/ Maritza Antú
Justice

Panel consists of Justices Wise, Bridges, and Antú.