

Petition for Writ of Mandamus Denied and Memorandum Opinion filed September 20, 2011.



In The

**Fourteenth Court of Appeals**

NO. 14-11-00713-CV

IN RE CYPRESS TEXAS LLOYDS, Relator

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
11th District Court  
Harris County, Texas  
Trial Court Cause No. 2009-33364**

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**MEMORANDUM OPINION**

This proceeding arises from a dispute over the amount of the covered loss under a homeowner's insurance policy. On August 19, 2011, relator Cypress Texas Lloyds, filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. In its petition, Cypress Texas Lloyds asks this court to compel the respondent, the Honorable Mike Miller, presiding judge of the 11th District Court of Harris County, to abate the underlying proceedings until an appraisal to determine the amount of the covered loss has been completed. We deny the requested relief.

Less than a month after Hurricane Ike damaged their home, Amber Knight and Quintin Prior (“the Knights”), the real parties in interest, filed a homeowners’ insurance claim with Cypress Texas Lloyds. On October 28, 2008, Cypress Texas paid the Knights the amount it believed was owing under the policy. On May 28, 2009, the Knights filed suit, but failed to serve Cypress Texas until August 19, 2009. Upon being served, Cypress Texas invoked appraisal on September 14, 2009, and requested abatement of the case until appraisal was completed. On August 12, 2011, the trial court signed an order granting the motion to compel appraisal, but denying the motion to abate the litigation pending appraisal.

Mandamus relief is available if the trial court abuses its discretion, either in resolving factual issues or in determining legal principles, when there is no other adequate remedy at law. *See Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law, or if it clearly fails to analyze or apply the law correctly. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005).

In *In re Cont’l Cas. Co.*, No. 14-10-00709-CV, 2010 WL 3703664, at \*5 (Tex. App.—Houston [14th Dist.] Sept. 23, 2010, orig. proceeding) (memo. op.), and *In re Slavonic Mut. Fire Ins. Ass’n*, 308 S.W.3d 556, 564–65 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding), this court granted mandamus relief as to both (1) the trial court’s denial of an insurer’s motion to compel appraisal, and (2) the trial court’s denial of an insurer’s request that the case be abated during the appraisal process. But after this court issued these opinions, the Supreme Court of Texas held that mandamus will not lie regarding the grant or denial of a motion to abate under these circumstances. Specifically addressing a motion to abate for an insurance appraisal, the court held that “[t]he trial court’s failure to grant the motion to abate is not subject to mandamus, and the proceedings need not be abated while the appraisal goes forward.” *In re Universal Underwriters of Texas Ins. Co.*, No. 10-0238, 2011 WL 1713278, \*7 n. 5 (Tex. May 6, 2011); *see also In re*

*Cypress Tex. Lloyds*, No. 14-11-00544-CV; 2011 WL 2650724 (Tex. App.—Houston [14th Dist.] July 7, 2011, orig. proceeding); *In re Liberty Mutual Group, Inc.*, No. 14-11-00310-CV; 2011 WL 2149482 (Tex. App.—Houston [14th Dist.] May 26, 2011, orig. proceeding) (memo. op.). Therefore, the parts of our two prior opinions in which this court granted mandamus relief as to the trial court’s failure to abate during the appraisal process are no longer good law. Compare *In re Universal Underwriters of Texas Ins. Co.*, 2011 WL 1713278, \*7 n. 5, with *In re Cont’l Cas. Co.*, 2010 WL 3703664, at \*5, and *In re Slavonic Mut. Fire Ins. Ass’n*, 308 S.W.3d at 564–65.

Relator has not established entitlement to the extraordinary relief of a writ of mandamus. Accordingly, we deny Cypress Texas Lloyds’ petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Frost and Seymore.