

THOUGHT LEADERSHIP

News

UNION INSURANCE OBTAINS DISMISSAL OF HURRICANE COVERAGE ACTION BY BANKRUPTCY COURT & IS AWARDED ATTORNEYS' FEES

Newsbrief

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Recently, Union Insurance Company successfully defended, and recovered its attorneys' fees, in an adversary proceeding in bankruptcy court brought by the debtor in possession for building damages allegedly caused by Hurricane Ike. *Gulf Freeway Plaza, LLC v. Union Insurance Company*; Adversary Proceeding No. 10-03378; in the United States Bankruptcy Court for the Southern District of Texas, Houston Division. Union successfully defended the adversary proceeding by obtaining a dismissal of all claims against it. Union sought dismissal on the basis that the debtor should be judicially estopped from pursuing the adversary proceeding because it failed to disclose the claim to the bankruptcy court in its schedules, because it caused a related entity to bring a lawsuit outside of the bankruptcy against Union, and because the corporate representative of both entities gave conflicting testimony in the two lawsuits regarding the claim.

In the adversary proceeding, during a hearing to obtain a turnover of insurance proceeds held by the lienholder, the corporate representative testified that the building had been repaired and was ready to be placed back into service, and presented the court with supporting projected income schedules. In the non-bankruptcy proceeding, the same person (acting as corporate representative for a related entity) testified that the building required millions in repair and that it was not fit to be used for any purpose. After hearing the evidence obtained in both suits, the bankruptcy court ordered the adversary proceeding dismissed and awarded Union its costs and attorneys' fees for having to defend the action.

Editor's Note: Jamie Cooper and Jeff Tinkham of Martin, Disiere, Jefferson & Wisdom represented Union in this case. Jamie is a member of the firm's insurance team and Jeff is the firm's bankruptcy specialist. The firm wishes to thank Union for allowing us to undertake the challenges involved in a bankruptcy proceeding that contained complex insurance issues.