

THOUGHT LEADERSHIP

News

BREACH OF CONTRACT CLAIM NOT SUPPORTED BY SWORN PROOFS OF LOSS ALLOWS INSURER TO AVOID BREACH OF CONTRACT SUMMARY JUDGMENT

Newsbrief

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Last Wednesday, U.S. Fire won reversal of summary judgment for a policyholder on the issue of “whether property damage to two apartment complexes in Austin, Texas was caused by one hail storm or two separate hail storms in the spring of 2006.” *U.S. Fire Ins. Co. v. Lynd Co.*, — S.W.3d —, 2012 WL 1430541 (Tex.App.-San Antonio April 25, 2012.) Lynd sued its primary carrier and its excess carrier for breach of contract and extra-contractual claims for failure to pay its property damage claim. The trial court granted summary judgment for Lynd. On appeal, U.S. Fire argued that summary judgment was improper and not supported by the evidence. In reversing the summary judgment and allowing U.S. Fire to continue to defend the lawsuit, the court relied on the sworn proofs of loss submitted with the claim. The sworn proofs of loss submitted with the claims did not support the basis for Lynd’s recovery – they identified a different cause of loss. The court found that the sworn proofs of loss were “prima facie evidence” of the facts recited and that U.S. Fire was entitled to rely on them to avoid summary judgment.