

THOUGHT LEADERSHIP

News

SAN ANTONIO COURT OF APPEALS FINDS FACT ISSUES PRECLUDE SUMMARY JUDGMENT FOR PRIMARY AND EXCESS INSURERS, BUT GRANTS SUMMARY JUDGMENT ON CHAPTER 542 LATE PAYMENT CLAIMS

Newsbrief

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Last Wednesday, the San Antonio Court of Appeals concluded that fact issues involving damage caused by one or two hail storms precluded summary judgment on the insured's breach of contract claims against its primary and excess insurers. But the court affirmed the trial court's finding that the \$5,000,000 paid by primary insurer was not paid timely and affirmed the trial court's award of penalties and interest under Chapter 542, Texas Prompt Payment of Claims Act.

In *United States Fire Insurance Company v. Lynd Company*, 2012 WL 3326344 (Tex. App.-San Antonio, August 15, 2012), the court withdrew its April 25, 2012 decision and reviewed a trial court's grant of summary judgment on the insured's breach of contract claim and awarding damages, attorney's fees and statutory interest under Chapter 542. The trial court also awarded summary judgment to the excess insurer RSUI Indemnity Company. On appeal, U.S. Fire argued that the evidence raised material fact issues on whether the damage caused to two of the insured's apartment complexes was the result of one or two hail storms. The San Antonio Court of Appeals agreed.

Following review of expert reports, proof of loss forms and other evidence submitted, the court found that fact issues precluded summary judgment in favor of the insured. But because the excess insurer, RSUI's summary judgment evidence was "dependent on and interwoven with" the insured's summary judgment, the court also reversed judgment in favor of RSUI and remanded the breach of contract case for further proceedings. Concerning the trial court's award of Chapter 542 penalties and interest on the \$5,000,000 paid by United States Fire, however, the court found that the payments were not made timely and affirmed summary judgment in favor of the insured awarding Chapter 542 penalties and interest.