

THOUGHT LEADERSHIP

News

## FIFTH CIRCUIT HOLDS REPLACEMENT VALUE WAS THE APPROPRIATE MEASURE OF DETERMINING DAMAGES FOR A WASTE TREATMENT FACILITY DESTROYED BY AN EXPLOSION

Newsbrief

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On January 23rd, the Fifth Circuit held that a district court did not err in finding that replacement value was the appropriate measure of damages for a destroyed waste treatment facility and did not abuse its discretion in permitting appraiser to provide expert testimony as to the replacement value. *Factory Mut. Ins. Co. v. Alon USA L.P., et al.*, --- F.3d ---, 2013 WL 257134, Cause No. 11-11080 (Fifth Cir. Jan. 23, 2013.)

An insurer brought subrogation action against the owner and operator of an oil refinery plant seeking to recover damages for money paid to operator of waste treatment facility at refinery after explosion destroyed facility. The parties stipulated to liability and agreed that damages would be determined by the fair market value of the facility before the explosion, but they fundamentally disagreed as to how fair market value of the facility should be calculated. The insurer contended that it was entitled to the facility's replacement cost, *i.e.*, the cost of new parts and labor adjusted downward to account for the original plant's depreciation at the time of the explosion, since there is no market for the plant that can be used as a measure of value. The owner argued that the insurer was only entitled to the cost of the facility's component parts.

The United States District Court for the Northern District of Texas found that, even though there is a market for specific used components, there was no market for a used facility's system. Because the sum price of the system's components did not reflect the full value of the operational plant, the district court found that the fair market value was determined by the replacement cost adjusted for improvements in value beyond the destroyed plant and depreciation reflecting the remaining useful life of the plant before its destruction. Accordingly, the district court found the owner liable for \$3,790,391.96, plus interest.

The owner of the facility appealed, challenging the measure of damages and calculation of fair market value. In reviewing the district court's findings of fact for clear error, the Fifth Circuit determined there was ample evidence to support the district court's finding that no market existed for the facility's systems and thus, replacement cost was the appropriate measure of damages for the destroyed facility. The Fifth Circuit further held that the district court did not abuse its discretion by permitting an appraiser to provide expert testimony as to replacement value of the

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