

THOUGHT LEADERSHIP

News

TEXAS PROMPT PAYMENT ACT NOT APPLICABLE TO BUSINESS INTERRUPTION CLAIM FIRST MADE AFTER SUIT FILED

Newsbrief

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The U.S. District Court for the Southern District of Texas, Judge Lee H. Rosenthal recently granted summary judgment in favor of Lexington Insurance Company after finding that the insurer promptly paid the insured's covered loss once the insured provided the requested invoices. And, the business interruption claim failed because the insured lacked the expert testimony necessary to support the claim. Lastly, Texas Insurance Code Sec. 542 - Prompt Payment of Claims Act - was not violated because the business interruption claim was not made until after suit was brought.

In *Metro Hospitality Partners, LTD v. Lexington Insurance Company*, 2015 WL 409803 (S.D.Tex. January 29, 2015), the Crown Plaza Hotel's air conditioner chiller broke down in August 2010. Two weeks after reporting the claim, the insured sent a repair estimate and the insurer responded accepting the claim and requested repair bids, contracts or invoices for payment. The insured did not respond for nine months and then demanded \$600,000, asserting property loss, internal labor costs and "intangible" "reputation" damages plus \$15,000 in attorney fees from the insurer. The only detailed information provided were \$115,000 in invoices for the chiller replacement. The insurer applied the \$25,000 deductible and promptly paid \$90,000. This lawsuit followed.

In a well reasoned opinion, Judge Rosenthal found that all properly documented damages had been paid and no competent evidence supported the amount of business interruption damages claimed. Accordingly, summary judgment was granted on the breach of contract and extra-contractual claims. Then focusing on the Texas Prompt Payment claims related to business interruption, the Court observed that the business interruption claim was first made after suit was filed and no documents in support were provided until after "significant prodding from the court and the defendant...." The court found that the Texas Prompt Payment claims based on the business interruption claim and the facts presented, failed as a matter of law. Summary judgment was granted in Lexington's favor on all claims.