

THOUGHT LEADERSHIP

News

DALLAS APPEALS COURT AFFIRMS SUMMARY JUDGMENT GRANTED AFTER APPRAISAL IN FAVOR OF INSURER

Newsbrief

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A recent case out of Dallas reinforced the prevailing view in Texas that a completed appraisal bars a claim for breach of contract. In *Richardson E. Baptist Church v. Philadelphia Indem. Ins. Co.*, No. 05-14-01491-CV, 2016 WL 1242480 (Tex. App.—Dallas, Mar. 30, 2016), the insured was suing its carrier to recover damages for breach of contract, violations of the Texas Insurance Code, breach of the duty of good faith and fair dealing, and conspiracy based on the handling of a claim for hail damage to the roofs on two of their buildings.

On April 23, 2013, the Church notified Philadelphia Indemnity that the roofs on two of the buildings were damaged during a hailstorm. The Church submitted an estimate of from a roofer for replacing the roofs on two buildings. The insurer assigned an independent adjusting company to investigate the claim. The adjuster inspected the property and determined the hail damage required replacement of one slope of one roof and repairs to the rest. The Church's pastor disagreed with the adjuster's findings and estimate and told the adjuster they had an expert examine the roofs and found more extensive damage. Philadelphia Indemnity instructed the adjuster to hire an engineer for an evaluation. The engineer issued a report stating the only hail damage was to the one slope of the roof. Although the engineer found less damage than the adjuster had found, Philadelphia Indemnity continued to offer to pay the Church based on the adjuster's original estimate. The adjuster reported that the insured continued to disagree with the findings and also stated in his report that the church "would option for the appraisal provision in the policy" but that the pastor "was still in the process of deciding who" the Church's appraiser would be.

On June 24, 2013, Philadelphia Indemnity issued a check to the Church for the adjusted amount. On July 1, 2013, the Church hired a public adjuster who estimated that after deducting the \$2,500 deductible, the insurer owed the Church \$33,872.58. The public adjuster also stated, "If we cannot reach an agreement then the insured is likely to invoke appraisal and name Loy Vickers." On July 23, 2013, the Church hired a law firm and also retained an "expert litigation adjuster, Art Boutin." On August 2, 2013, Boutin estimated the damage to the Church from hail was \$112,077.32.

The Church filed suit on November 21, 2013. On November 25, 2013, before being served, Philadelphia Indemnity sent a written request for appraisal pursuant to the policy's provisions. The parties proceeded with appraisal and the appraisers issued a written determination of repair costs and the actual cash value of the damages. Four days later,

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Philadelphia Indemnity issued a check, which was the amount of the appraiser's award less the deductible and the amount previously paid.

In its suit, the Church alleged Philadelphia Indemnity breached the policy, engaged in unfair settlement practices prohibited by the Texas Insurance Code, and breached the duty of good faith and fair dealing. The Church also alleged the adjuster did not comply with the Texas Insurance Code and that they engaged in a civil conspiracy to underpay the claim. The defendants filed motions for summary judgment asserting both traditional and no-evidence grounds. The trial court granted the motions for summary judgment and ordered the Church take nothing on its claims.

In their claim for breach of contract, the Church argued that the insurer breached the contract by (a) refusing the Church's request for appraisal and misrepresenting the conditions precedent to the permissible invocation of appraisal, thereby unnecessarily delaying the resulting appraisal award; and (b) intentionally underestimating and undervaluing the Church's loss. The Church attempted to argue that its email stating it would "likely" demand appraisal was a pre-suit demand for appraisal that was refused. The court found that the emails were not a demand for appraisal. The Church further argued that the result of the appraisal served as evidence that the contract was breached. Citing *Breshears v. State*, 155 S.W.3d 340 (Tex. App.—Corpus Christi 2004, pet. denied), the court found that a later appraisal award that is higher than an initial payment does not prove that an insurer breached the contract when the insurer promptly pays the difference.

As to the extra-contractual claims, the court found that summary judgment was properly granted as to both defendants because there was no evidence that the defendants violated chapters 541 and 542 of the Insurance Code or to support a claim for breach of the duty of good faith and fair dealing or civil conspiracy. After overruling all of the Church's issues on appeal, the trial court's judgment was affirmed in full.