THOUGHT LEADERSHIP

News

"INSURER PAID TOO MUCH," ALLEGES INSURED; FIFTH CIRCUIT DISAGREES

Newsbrief
19 SEP 2019

In two related cases, the Fifth Circuit last week affirmed a summary judgment in favor of a church's property insurer and dismissal of all claims against the adjusting company who handled the church's claim. In *Univ. Baptist Church of Fort Worth v. Lexington Ins. Co.*, No. 18-11415, 2019 WL 4281938 (5th Cir. Sept. 10, 2019) and *Univ. Baptist Church of Fort Worth v. York Risk Services Group, Inc.*, No. 18-10713, 2019 WL 4281934 (5th Cir. Sept. 10, 2019), the church sued its property insurer and the insurer's outside adjusting company, alleging its claim for storm damages was mishandled.

The insurer paid its policy limit of $250,000 for required code compliance work, and the church bore additional non-covered costs of about $600,000. Rather than a more typical allegation that the insurer's estimate was too low and the claim was underpaid, the church alleged that the defendants should have held the repair contractor to his initial, lower bid (which all parties admit they knew was far too low) rather than asking him to correct his bid. The church believed the insurer should have forced the contractor to take a bath to the tune of $575,000, to save the church from having to pay the portion of the claim exceeding its policy limit.

On appeal, the Fifth Circuit affirmed the district court's rulings in favor of the insurer and adjuster, holding it was neither common-law bad faith nor a violation of the Insurance Code or the DTPA to pay the claim based on the contractor's higher, corrected bid, rather than the initial, clearly incorrect bid.