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News

COURT FINDS MATERIAL FACT ISSUE ON REASONABLENESS OF $250,000 "COVID-19 PROTECTION AND DECONTAMINATION COSTS" INCLUDED IN HAIL DAMAGE REPAIR – INSURER'S MOTION FOR SUMMARY JUDGMENT DENIED

Newsbrief
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A federal District Court judge in the Northern District of Texas recently concluded there is nothing inherently unreasonable about seeking $250,000 in unspecified COVID-19 "protection and decontamination" damages in *Valleyview Church of the Nazarene v. Church Mutual Insurance Co.,* No. 2:20-CV-222-Z-BR, 2022 WL 1460208 (N.D. Tex. July 13, 2022, mem. op.). Valleyview owned and operated a church in Amarillo, Texas. In March and April 2019, two hailstorms occurred on Valleyview's property. Its insurance company, Church Mutual, inspected the property after the first hailstorm and found Valleyview suffered mostly cosmetic damage, along with age-related wear, tear, and deterioration, ultimately concluding that wind and hail caused less damages than Valleyview's $2,500 deductible, so it did not issue any payment. After a second hailstorm, Valleyview submitted a second claim, now including interior water damage. Church Mutual similarly partially denied coverage, stating that the interior damage was due to repeated seepage, leakage, poor workmanship, or maintenance—all excluded from the policy. Valleyview filed a lawsuit for breach of contract, Insurance Code violations, Deceptive Trade Practices Act violations, and breach of good faith and fair dealing.

Church Mutual moved for summary judgment, arguing Valleyview's claim for $250,000 for "COVID-19 protection and decontamination costs" was unreasonable on its face and should be struck or reduced. The Court denied Church Mutual's summary judgment motion on all claims including for the COVID-19 objections, finding a material fact issue as to the proper amount of damages.

The Court also ordered the parties to brief whether it should stay the case and await the Supreme Court of Texas' certified questions from *Overstreet v. Allstate Vehicle and Property Insurance Co.*, 34 F.4th 496 (5th Cir. 2022). In that case, the Fifth Circuit Court of Appeals certified to, and is currently awaiting answers to three questions from, the Supreme Court of Texas:

1.

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1. Does the concurrent cause doctrine apply where there is any non-covered damage, including wear-and-tear to an insured party's property, but such damage does not directly cause the particular loss eventually experienced by the insured party?
2. If so, does the insured's allegation that its loss was entirely caused by a single, covered peril bear the burden of attributing losses between that peril and other non-covered perils that the insured contends did not cause the particular loss?
3. If so, can the insured meet that burden with evidence indicating that the covered peril caused the entirety of the loss?

Editor's Note: With courts rejecting COVID-19 insurance claims, efforts to include related damages as part of covered repair costs is a new trend being monitored by MDJW. It further emphasizes the importance of the Texas Supreme Court's anticipated ruling on the Concurrent Cause Doctrine questions. We will continue to monitor these developments and report on new decisions as they occur.