

# Texas Panel Revives Condo's Hail Damage Coverage Suit

By Eli Flesch

A Dallas condominium community hit by two hailstorms was given another chance to secure millions in coverage for the first storm when a Texas appeals court decided that an appraisal of damages only accounted for the second storm.

A panel of Fifth District judges Monday said RSUI unit Landmark American Insurance Co. failed to show that an appraisal award of below \$100,000 also included damages to the Richland Trace Owners Association for the earlier storm. The panel's ruling sends Richland Trace's suit back

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to a Dallas court for reconsideration.

At stake in the suit were two policies — one for 2016 and 2017 — but the panel determined that the appraisal award was decided upon only under the terms of the 2017 policy. No coverage was ultimately afforded under that policy, because the estimate of damages fell below Richland Trace's \$100,000 deductible, per court documents.

“The only hailstorm listed on the appraisal award is the March 2017 storm,” the panel said in a 13-page ruling. “The references to a singular storm and a singular policy in the

appraisal award are consistent with the Supreme Court’s pronouncements that the appraisal process resolves the issue of damage caused by a specific occurrence.”

The earlier storm, which hit in March 2016, caused millions in damage, according to Marc Gravely, counsel for Richland Trace. Gravely, who has represented large property owner trade groups, told Law360 on Tuesday that Landmark failed to honor even basic discovery on the claim file, and was very aggressive in seeking a case dismissal.

“The insurance company had obviously tried to avoid payment for a loss in a prior policy period that we believe they had full knowledge of, and tried to use the appraisal process, as it now exists in Texas, to thwart recovery by the policyholder of benefits due,” Gravely said. “It was clear to us that Richland Trace had been underpaid.”

He also said the appraisers involved in the claim were aware of prior damage to Richland Trace’s condominiums. That made the suit a classic case of insurance bad faith, Gravely said, accusing Landmark of ignoring facts that it knew existed.

Landmark had argued that even if the 2016 policy applied, Richland Trace had surrendered its right to coverage because it failed to give prompt notice that it intended

to make a claim under that policy. But the panel rejected that argument, saying Landmark had not shown that it was prejudiced by a delay. The court said there wasn’t any evidence in the record to show when Richland Trace gave notice of its loss.

“Even if we assume for purposes of this issue that the evidence shows Richland Trace did not timely give notice, there also is no evidence in the record that Landmark was prejudiced by any delay,” the panel of judges found.

Counsel for Landmark didn’t immediately respond to requests for comment. An RSUI spokesperson declined to comment.

Contact information for Richland Trace wasn’t immediately available.

Richland Trace is represented by Brendan K. McBride of the McBride Law Firm and Marc E. Gravely and Jonathan C. Lisenby of Gravely PC.

Landmark is represented by Jessica Zavadil Barger, Andrew C. Nelson and Lisa M. Wright of Wright Close & Barger LLP and Joelle G. Nelson and Kristopher M. Stockberger of Lewis Brisbois Bisgaard & Smith LLP.

The case is Richland Trace Owners

Association v. Landmark American Insurance Co. et al., case number 05-20-00944-CV, in the Court of Appeals for the Fifth District of Texas at Dallas.

--Editing by Neil Cohen.

Update: This story has been updated to include RSUI's response to a comment request. ■