

Insurer's Hail Claim Denial Not Unreasonable, 10th Circ. Says

By Hope Patti

Law360 (May 30, 2025, 8:20 PM EDT) -- A commercial property owner failed to show that its insurer unreasonably denied coverage for a hail damage claim under Colorado law or violated insurance industry standards by relying on an expert report, the Tenth Circuit said in an unpublished opinion Friday.

A Colorado federal court correctly granted summary judgment to Mid-Century Insurance Co. in the bad faith suit brought by policyholder El Dueno LLC, a three-judge panel **held**, finding that the property owner "has shown no more than mere disagreement."

"As a general matter, disagreements between an insurance company's expert and a plaintiff's expert do not necessarily suggest that the investigation or claim denial was unreasonable," the panel said, adding that "mere disagreement is not enough for a claim under Colorado law."

The dispute stems from a claim that El Dueno made for roof damage that its commercial building in Greeley, Colorado, sustained during a July 2018 hailstorm. According to court filings, the policy issued by Mid-Century included coverage for direct physical loss or damage caused by hail.

Mid-Century's claim adjuster, Maggie Fields, investigated the roof and found approximately \$22,000 in hail damage. The insurer subsequently paid El Dueno \$12,000, deducting for depreciation and the policy's deductible, according to court filings.

After a contractor hired by El Dueno estimated that it would actually cost \$343,000 to repair the roof and bring it to code, Mid-Century sent a large-loss adjuster to reinspect the roof and hired Rimkus Engineering to determine whether hail damaged the roof, court documents stated.

Rimkus engineer William Templeton later concluded that hail did not damage the roof and that any damage was preexisting or came from other causes, according to court filings. Mid-Century informed El Dueno that the roof repairs would not be covered, but allowed the property owner to retain the already disbursed payments.

El Dueno sued the insurer for bad faith; however, the court ultimately awarded summary judgment to the insurer in February 2024, saying the property owner did not show that Mid-Century's reliance on Templeton's report was unreasonable or violated industry standards.

The panel on Friday rejected El Dueno's **contentions** that the conflicting reports before Mid-Century and flaws in Templeton's report meant the insurer unreasonably denied coverage and that those alleged issues demonstrated a genuine dispute of material fact that prevented summary judgment.

"Read generously, plaintiff's brief suggests that defendant was unreasonable for relying on Templeton's report and investigation conducted when small patches of snow and ice dotted the roof," the panel said. "This is not an articulated industry standard, however, and without one with which to compare defendant's conduct, we cannot conclude defendant acted unreasonably in denying coverage."

El Dueno's argument that Mid-Century unreasonably relied on Templeton's report because it was generated after Fields' report also fails, the panel said, adding that "plaintiff presents no evidence of an industry standard that suggests insurers act unreasonably when they rely on a later-generated

report."

"In fact, courts have reached the opposite conclusion, holding that an insurance company does not act unreasonably in determining the scope and value of a claim by relying on a report generated by an independent engineer, even if that report conflicts with an insurance adjuster's initial assessment," the panel said.

Representatives of the parties did not immediately respond to requests for comment Friday.

U.S. Circuit Judges Nancy L. Moritz, Joel M. Carson and Michael R. Murphy sat on the appeals panel for the Tenth Circuit.

El Dueno LLC is represented by Richard D. Daly, John Scott Black, Jonathan Sar and Laura Hanley Carlock of Daly & Black PC.

Mid-Century Insurance Co. is represented by L. Michael Brooks Jr. and Paul D. Dinkelmeyer of Thompson Coe Cousins & Irons LLP.

The case is El Dueno LLC v. Mid-Century Insurance Co., case number 24-1110, in the U.S. Court of Appeals for the Tenth Circuit.

--Editing by Nick Petruncio.