

Late Notice Bars Roof Damage Coverage, 5th Circ. Affirms

By **Hope Patti**

Law360 (October 7, 2026, 2:34 PM EDT) -- An insurer owed no coverage under a 2022 commercial property policy for damage that a Texas building sustained during a June 2018 hailstorm, the Fifth Circuit said, finding that the carrier was prejudiced by the property owner's four-year delay in providing notice.

A Texas federal court correctly granted summary judgment in favor of Depositors Insurance Co. on breach of contract, bad faith and Texas Insurance Code violation claims brought by the property owner, Dwight Gann, a three-judge panel held in an **unpublished opinion** Monday.

According to court filings, Depositors insured the property in Irving, Texas, which consists of one building with three roof sections, under policies issued in 2018 and 2022. Both policies required prompt notice of loss or damage.

In September 2022, Gann made a claim under the 2022 policy after discovering interior water damage at the property, the ruling stated. Depositors inspected the property and determined that the damage to the roof was hail-related and issued payment for repairs.

Gann had also hired his own consultant to evaluate the property for damage. The consultant determined that all three sections of the roof required replacement because of damage from a June 2018 hailstorm, according to court filings.

Depositors, which received the report in October 2023, refused any additional payment on the grounds that the claimed June 2018 date of loss occurred outside the 2022 policy period, court documents stated.

Gann, as trustee of BR Real Estate Holdings Trust, and Sage Management LLC filed the present action in Texas state court in June 2024. The suit was removed to federal court, where U.S. District Judge Karen Gren Scholer granted summary judgment in favor of Depositors in August 2025.

The judge found that the insurer did not owe coverage for the June 2018 storm under the 2022 policy because any damages from the storm fall outside the policy's coverage period. And even if the property owner made a claim under the 2018 policy, Judge Scholer said "the years-long delay in notice was not prompt as a matter of law and prejudiced" Depositors.

Judge Scholer also denied Gann's subsequent request to alter or amend the judgment, saying the property owner merely wanted to rehash arguments that the court had already considered and addressed.

The panel said Monday it found no basis to reverse the district court's decision, finding that Gann's delay in providing notice of the damage to its roof was unreasonable.

While the property owner contended that the delay was reasonable because an insurance claim was promptly filed after interior water damage was discovered, the panel said Gann "offered no excuse as to why the damage to the roof was not previously discoverable for such a long period of time."

Depositors has also shown that it was prejudiced by the delay by establishing that it was unable to promptly investigate the loss while the matter was fresh, the panel said.

Additionally, the panel found that Gann's claims for bad faith and violations of Texas Insurance Code Chapter 541 fail because he has not shown that he suffered an injury independent of the insurance claim.

The claims under Chapter 542 of the Texas Insurance Code similarly fail because Gann failed to establish that Depositors was liable for a claim under the 2018 policy, the panel said.

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

U.S. Circuit Judges Jerry E. Smith, Catharina Haynes and Kurt D. Engelhardt sat on the appeals panel.

Dwight Gann, as trustee of BR Real Estate Holdings Trust, and Sage Management LLC are represented by Andrew A. Woellner of Woellner Law Group PLLC.

Depositors Insurance Co. is represented by Patrick M. Kemp, Robert G. Wall and Leah B. Fitzgerald of Segal McCambridge Singer & Mahoney.

The case is Gann et al. v. Depositors Insurance Co., case number 25-11291, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Emma Brauer.