

First United Pentecostal Church: Taking Time to Resolve Doubts as to Liability is Not Bad Faith

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In a recent decision, *First United Pentecostal Church v. Church Mutual Insurance Company*, the United States Court of Appeals for the Fifth Circuit reaffirmed the principle that an insured must provide adequate evidence that the insurer's conduct was "arbitrary, capricious, and without probable cause" to recover penalties under La. Revised Statutes § 22:1892. A delay in payment of more than 30 days from the date the insured provided information is not sufficient to establish bad faith.

The plaintiff in *First United* submitted a claim to its property insurer, Church Mutual, for damage from Hurricanes Laura and Delta. Church Mutual inspected the property on October 12, 2020, approximately six weeks after the first of the two storms. Finding questions about alleged causation and damage, Church Mutual engaged an engineer. The engineer issued a full report on December 3.

Church Mutual reviewed the engineer's report and prepared an estimate of damages on January 4, 2021. Then, Church Mutual issued payment on January 14, 2021.

Subsequently, First United sued for alleged underpayment and for failure to pay the hurricane claims within 30 days of satisfactory proof of loss. After a bench trial, Judge James D. Cain, Jr. of the United States District Court for the Western District of Louisiana held that Church Mutual acted in bad faith, failed to make timely payment, and that its handling of the claim was arbitrary and capricious in violation of § 22:1892.

The Fifth Circuit reversed. The Court started its analysis with the statutory language in La. R.S. § 22:1892, which provides that if an insurer fails to "pay the amount of any claim due any insured within thirty days after receipt of satisfactory proof of loss..." and "such failure is found to be arbitrary, capricious, or without probable cause," the insurer is subject to a 50% penalty on the amount due plus reasonable attorney fees and costs.

The Fifth Circuit concluded that there was no bad faith under the facts presented because, at the time of the alleged delay, "reasonable and legitimate question[s]" existed as to the extent of the claim. Without the engineer's report, it was questionable whether the roof would need to be replaced. The engineer's report also was necessary to provide a full view of causation and damage because certain alleged damage existed before the hurricanes. These questions could not be resolved until the adjuster received and reviewed the engineer's report.

The Fifth Circuit determined that it was not arbitrary or capricious for Church Mutual to take time to review the engineer's report, prepare an estimate based on the engineer's report, and pay the claim. Because "reasonable doubts exist[ed]" as to liability, it was error for the trial court to award penalties without allowing the insurer time to resolve

those questions. Moreover, said the Court, the trial should have strictly construed La. R.S. § 22:1892, because it is a penal statute.

The *First United* decision confirms that penalties under La. R.S. 22:1892 are not to be awarded automatically based on payment more than 30 days after the “satisfactory proof of loss.” Instead, the insured must meet its burden to prove the insurer acted arbitrar[il]y, capricious[ly], or without probable cause.” Under *First United*, no penalty should be awarded when an insurer takes the time to thoroughly resolve “reasonable” doubts as to coverage or the extent of damage.