WALKER WILCOX
WALKER WILCOX MATOUSEK LLP

WALKER WILCOX WINS APPEAL IN TEXAS' FIRST DISTRICT

Walker Wilcox partner Avniel Adler obtained a victory in Texas' First Court of Appeals on behalf of his insurer client. The ruling affirmed a take-nothing summary judgment for the insurer by a Harris County District Court. The lawsuit arose out of a dispute between the insurer and plaintiffs regarding coverage for windstorm damage to plaintiffs' home. The parties had participated in the appraisal process and the insurer partially paid the award, challenging coverage for part of it. While plaintiffs sought coverage for the unpaid portion of the award, they primarily argued that the paid portion of the award was invalid because the appraisal panel exceeded its authority by awarding only roof repairs, rather than a full roof replacement. Plaintiff also asserted common law and statutory bad faith claims against the insurer for mishandling the claim.

Walker Wilcox moved for a combined no-evidence and traditional summary judgment in the insurer's favor, arguing that there was no evidence of breach of contract as to the paid portions of the award, and regardless, there was no coverage for any of the amounts awarded. In response, plaintiffs argued that the insurer failed to meet its burden that the roof portion of the award was enforceable because there was a fact issue as to whether the appraisers exceeded their authority by making coverage decisions. Plaintiffs further argued that even if the appraisal award was enforceable, their extra-contractual claims could still proceed. The trial court rejected plaintiffs' arguments and granted a take-nothing judgment in favor of the insurer.

On appeal, plaintiffs argued that there was a fact issue as to the validity of the roof portion of the award and that they could maintain their extra-contractual claims relating to that issue. Although the Court acknowledged that certain statements made by the insurer's appraiser arguably raised a fact issue as to whether the appraisal panel exceeded their authority, the Court held that the insurer conclusively negated an essential element of plaintiffs' breach of contract claim, namely breach, because the insurer proved that there was no coverage for the appraisal award. With respect to the extra-contractual claims, the Court held that plaintiffs failed to raise a fact issue concerning their entitlement to policy benefits, and therefore, their extra-contractual claims could not stand. Notably, the Court rejected plaintiffs' argument that the insurer failed to consider an underwriting inspection report completed before the insurance policy issued which purportedly supported plaintiffs' argument that the roof damage was caused by wind, rather than installation or workmanship issues, because the underwriting report was "made from limited observation and interview" and raised "less than a scintilla of evidence" that plaintiffs were entitled to a new roof. Plaintiffs' motion for rehearing was subsequently denied.