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Traub Lieberman Partners Lenhardt and Smith Obtain Directed Verdict in Broward County Failed Repair Sinkhole Trial

Related Attorneys: Michael Francis Lenhardt, Burks A. Smith, III

On Tuesday, July 16, 2019, Traub Lieberman Partners Michael Lenhardt and Burks Smith won a Directed Verdict at trial in a dispute over Sinkhole Loss coverage in Broward County Circuit Court. The lawsuit arose out of a claim for Breach of Contract involving an alleged “failed repair” of a 2005 sinkhole at the insureds’ property. The Plaintiffs argued that their Policy Limits did not apply because the carrier allegedly undertook the subsurface repairs, relying on *Drew v. Mobile USA Ins. Co.*, 920 So.2d 832 (Fla. 4thDCA 2006). The Plaintiffs asserted that because the insurance company allegedly hired the below ground repair company, a “new contract” was formed, and the Plaintiffs should be entitled to limitless repairs to their home, notwithstanding the Policy Limits. This argument obviously presented the carrier with very significant exposure.

Attorneys Lenhardt and Smith provided a vigorous defense for the insurance company at trial, during which they presented the jury with evidence that the carrier did not, in fact, hire the subsurface repair company. They further established to the jury that the insureds actually signed a contract with the repair company directly, and that the defendant did not invoke the Our Option repair clause of the Policy. After the Plaintiffs rested their case, Mr. Lenhardt and Mr. Smith moved the Court for entry of a directed verdict. The defense argued to the Court that the Plaintiffs could not prove their case to the jury based upon the facts presented as a matter of law, thus entitling the insurance company to a defense verdict.

After extensive oral argument on the issue, the Court agreed with the carrier’s position, directed a verdict in favor of the Defendant, and discharged the jury. The Court has reserved ruling on the Defendant’s entitlement to attorneys’ fees and costs.