

Thursday, May 17, 2012

Attorneys help Gloria and Emilio Estefan Company win \$6.7 M in breach of contract suit

By Adolfo Pesquera

Case: Pin-Pon Corp. v. Landmark American Insurance, Lexington Insurance

Case no: 31-2009CA010320

Description: Breach of contract

Filing date: Sept. 2, 2009

Trial dates: April 16-May 3, 2012

Jury decision: \$6.7 million

Judge: Senior Indian River Circuit Judge James Midelis

Plaintiff attorney: Stephen A. Marino Jr. and Rochelle Willis, Ver Ploeg & Lumpkin, Miami

Defense attorneys: Scott J. Frank, Tampa, and Lauren D. Levy, Miami, Butler Pappas Weihmuller Katz Craig; William Berk and Melissa Sims, Berk Merchant & Sims, Miami

Details: Hurricane Frances pounded Vero Beach on Sept. 5, 2004. Three weeks later, Hurricane Jeanne struck the same region. The Palm Coast Resort Hotel in Vero Beach sustained damage from both storms.

The hotel is held by music industry greats Gloria and Emilio Estefan and managed by their company Pin-Pon Corp.

The hotel's primary insurance policy was with Lexington Insurance Co., and an excess policy was with Landmark American Insurance Co. Lexington paid up to its policy limit of \$2.5 million on the Frances claim, which Pin-Pon applied entirely to business interruption income loss of \$3.54 million.

Landmark paid just over \$2 million but refused to allocate any of that toward lost business income.

Pin-Pon filed two lawsuits for breach of contract, arguing both payments were substantially below what should have been paid to repair the structure and recover lost income. The lawsuits were consolidated for a jury trial.



Plaintiff case: The same summer the hurricanes blustered ashore, Pin-Pon bought a 32-year-old Howard Johnson motel intending to renovate it. But the hurricanes did so much damage, the company opted for a major remodel, made the property into a 1950s-style boutique motor inn and renamed it Costa del Este.

The insurance companies fought over the changes. There were disputes over what constituted repairing the hotel to its previous condition versus doing upgrades as part of the renovation.

Pin-Pon's lead counsel was Stephen A. Marino Jr., a partner at Ver Ploeg & Lumpkin. Associate Rochelle Willis assisted with witnesses and other aspects of the case. Marino had to build a hypothetical model, comparing repair costs to makeover expenses. He opted not to bring in conventional witness experts.

"I brought in people who actually did the work — the architect, the building consultant," Marino said.

They simply walked the jury through the construction process.

Defense case: Scott J. Frank and Lauren D. Levy represented Landmark. They did not respond to a request for comment by deadline.

William Berk and Melissa Sims represented Lexington. Berk said he had no comment.

Landmark sought a partial summary judgment based on a policy provision that lost income was limited to 110 percent of what its schedule of values estimated for a total of \$1.5 million. Circuit Judge Cynthia L. Cox agreed last Dec. 19.

At trial, Landmark disputed the length of time it should have taken to do repairs, claiming everything should have been completed in 6½ months. This was important to limiting its liability for lost income to what was already paid. Pin-Pon claimed an interruption period against Landmark of 15 months.

Outcome: Twenty minutes into deliberations, the jury requested a calculator.

"They were apparently doing the math themselves," Marino said.

The jury said Lexington and Landmark owed \$903,000 for building damages and \$1.5 million for building code upgrades "beyond those damages already paid."

The jury agreed with Pin-Pon on 15 months for lost income.

It also put the time length of business interruption attributable to Hurricane Jeanne at three months, for which Lexington was solely liable.

The parties stipulated before trial that business interruption losses would be calculated at \$241,020 per month. That brought the total award to \$6.7 million. However, Landmark will get a set-off credit for 6½ months of business interruption losses.

In addition to the award, Pin-Pon is seeking at least four years of prejudgment interest, which Marino estimated now exceeds \$2 million.

Post-verdict: Marino predicted Landmark will file every motion and appeal they can think of.

"There's not a motion they could have filed that they failed to," he said. "Landmark litigated for a year as to whether Pin-Pon had an insurable interest in the hotel that they owned. It struck me as unusual to question whether a named insured in possession of an insured property had standing to make a claim."

Marino will move for the entry of a final judgment, about \$800,000 in attorney fees and about \$100,000 in costs.