

# FLORIDA

## Joe L. Pressler v. Tower Hill Signature Insurance Company



**LUKS, SANTANIELLO  
PETRILLO, COHEN & PETERFRIEND**  
— OUR VERDICTS TELL THE STORY —

Fort Myers Senior Partner Patrick Boland, Esq., Senior Associate Brittany Cocchieri, Esq., and Fort Lauderdale Managing Partner William Peterfriend, Esq., obtained a favorable result in a Hurricane Irma property claim for damages to a property located in Fort Myers, Florida. The matter styled Joe L. Pressler v. Tower Hill Signature Insurance Company involved a condemned property due to Hurricane Irma damage and pre-existing damage, as well as Plaintiff's failure to conduct timely and adequate repairs after Hurricane Irma. The Defense was successful in having the trial issues limited to damages under Coverages A (Dwelling) and B (Other Structures) only, though Plaintiff was originally claiming damages under Coverages C (Personal Property) and D (Additional Living Expenses) as well. The Defense successfully had the claims under Coverages C and D abated, due to Plaintiff's failure to timely provide any documentation in support of those claims until the month of trial. This significantly lessened the potential exposure at trial for our client, as before those claims were abated, Plaintiff's demand was

significantly more than what Plaintiff ultimately asked for at trial for Coverages A and B. At trial for Coverages A and B, Plaintiff asked for \$317,450.38.

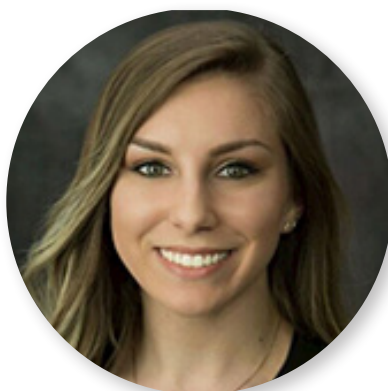
The case was tried over three days before Chief Judge Michael McHugh in Lee County. Our client, Tower Hill, insured the Plaintiff's property at the time of Hurricane Irma. Plaintiff timely reported a claim for Hurricane Irma damage to Tower Hill, but was thereafter unresponsive and failed to maintain communication with Tower Hill, forcing Tower Hill to eventually close the claim due to inactivity and unresponsiveness. Tower Hill later re-opened the claim on its own volition, and ultimately issued a \$100,667.24 check to Plaintiff for his property damages, after removal of recoverable depreciation at \$35,288.70 and the applicable hurricane deductible of \$5,100. Plaintiff received but did not endorse the check, later claiming a satisfied lienholder was incorrectly listed as a payee and the check amount was not enough for his damages. However, Plaintiff never advised



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Tower Hill of any issue or disagreement with the check amount or payees, and Plaintiff ultimately held onto the check for years after receiving it while the property continued to deteriorate to the point Lee County condemned the home.

The Defense did not dispute that the property was damaged by Hurricane Irma, but argued that the extent of the damages sustained was exacerbated by the Plaintiff's failure to do anything with the \$100,667.24 check he admitted at trial to receiving. Plaintiff also admitted at trial that despite receiving the check, he never advised Tower Hill of any disagreement he had with the amount and never advised Tower Hill that he could not cash the check because it listed a satisfied lienholder. Plaintiff also admitted at trial that it was the lienholder's fault – not Tower Hill's – for not timely filing the appropriate documentation regarding the satisfaction. Plaintiff also admitted that he never advised Tower Hill at any time that the lien was satisfied, despite his policy and the payment letter clearly requesting he advise Tower Hill if any of the lienholders listed are inaccurate. More than two years passed after Plaintiff received the check but before he filed a lawsuit against Tower Hill. At no point during those two-plus years did Plaintiff communicate with Tower Hill or request the check be re-issued so he could complete repairs to his property. All parties' experts agreed at trial that the damages significantly worsened over time.

The Defense also argued that the Plaintiff's roof had pre-existing damage in the form of visible holes and depressions in the roof, and that the roof of this property was by no means in pristine let alone satisfactory condition. This was argued to illustrate the pre-loss condition of the property, as a property insurance policy only requires the insurer to put the property back in its pre-loss condition after a covered loss. Plaintiff at trial requested an amount not only in excess of policy limits but also in excess of what the property pre-loss was worth based on the poor condition of the roof. The Defense called the Plaintiff's neighbor as a witness who testified that she has lived across the street from the Plaintiff for several years and saw the hole in the roof every single day. The neighbor testified that the hole in the roof significantly grew in size over time and existed long before Hurricane Irma. The neighbor also testified that she never saw any roof repairs done prior to Hurricane Irma – which was an issue, as Plaintiff argued repairs were completed just prior to Hurricane Irma. The Court did not allow the Defense to call a representative from Lee County Code Enforcement as a witness to testify regarding the pre-loss condition of the property or the several ongoing code violations the Plaintiff has received for his property for years before Hurricane Irma.

Opposing counsel asked the jury in closing argument to award Plaintiff \$317,450.38 total for damages under Coverage A -Dwelling and Coverage B - Other Structures (\$242.19 for a light post on the

property), for which the limits of coverage under the policy are \$255,000.00 and \$5,100.00 respectively. Ultimately the jury returned a verdict finding the total replacement cost value of damages to the Plaintiff's property under Coverages A and B combined to be \$153,125.80, and applicable depreciation to be \$27,207.17. Based on the jury's factual findings, the actual cash value of damages to the Plaintiff's property is calculated to be \$125,918.63. The Defense has filed a post-trial Motion to Determine Verdict Reductions or Application of Set-Offs, which is still pending before the Court.