



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | [www.law360.com](http://www.law360.com)  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

---

## Home Insurer Turns Tables On HOA's Coverage Suit

By Cara Bayles

Law360 (October 22, 2018, 8:36 PM EDT) -- Auto-Owners Insurance Co. turned around a homeowners association's lawsuit alleging it failed to adequately cover property damage from a hailstorm, after a Colorado federal jury found Friday in favor of the insurer's counterclaim that the condo complex put in a fraudulent claim.

The suit was originally filed by Sunflower Condominium Association, which claimed the insurance company breached its contract, acted in bad faith and was liable for a "special projects fee" after it failed to fully compensate the condo complex for storm damages that Sunflower said should have been covered by its policy.

But after a week-long trial, a jury found that it was Sunflower that breached the contract, by misrepresenting when it learned of the property damage and inflating the repair estimate.

Sunflower's attorney, Matthew R. Pearson of Gravely & Pearson LLP, said he was surprised by the verdict. But he also said in a motion for judgment as a matter of law filed Friday that he'd argued the case should have never gone before the jury.

"We have made a number of legal motions that may affect the verdict, and we're waiting for a response from the court," he told Law360 Monday.

The insurance contract, Pearson said, was meant to prevent fraud by the policyholder. But the fraudulent claim had come from a contractor hired by the insured.

"There wasn't any evidence the policyholder did anything wrong," he said. "That was the basis of their allegations. They are trying to impute the contractor's conduct onto the policyholder."

Sunflower, a multi-family homeowners association for a 23-building condominium complex in Aurora, Colorado, sued its insurer Auto-Owners in late 2016. The lawsuit was filed in state court and removed to federal court in December of that year.

The complaint said that after a September 2014 hailstorm damaged the complex's roofs, gutters and garages, Auto-Owners failed to pay for the full cost of repairs.

Sunflower's management team noticed damage to the property about a year later and submitted a claim to its insurer. But while an independent adjuster hired by the insurer said the total damage was worth about \$590,000, Sunflower estimated it would cost \$1.8 million to repair, according to court documents.

Auto-Owners brought counterclaims, saying Sunflower's cost estimate was inflated and that it lied about discovering the damage in December 2015. The insurance company brought counterclaims for recoupment and breach of contract, saying Sunflower had flouted the fraud clause in its insurance contract.

In May, U.S. District Judge William Martinez struck a major blow to Sunflower's case, denying its motion for summary judgment seeking to nix Auto-Owners' breach of contract counter-claim. He also ruled in favor of Auto-Owners' motion for summary judgment to wipe all of Sunflower's claims in the case.

That meant the case went to trial on only Auto-Owners' breach of contract claim against Sunflower. And on Friday, the jury found in favor of the insurer.

The verdict is "significant," according to Dallas attorney Steven Badger of Zelle LLP, who represents the first-party insurance industry in fraud and other improper conduct matters. He said it was rare to see insurance litigation backfire so dramatically on a plaintiff, and that the case was a good example of "the gamesmanship we are seeing more and more often from certain public adjusters and their estimators."

"In the past there has been no downside to public adjusters and their estimators grossly inflating claim measures, often for their own financial gain. There was nothing the insurance companies could do other than try to disprove these estimates," he said. "The Sunflower jury verdict is significant as it recognizes that the practice of grossly inflating estimates is fraudulent and there will be consequences."

Attorneys for Auto-Owners could not immediately comment on the verdict Monday.

Sunflower is represented by Matthew Pearson of Gravely & Pearson LLP.

Auto-Owners is represented by Terence M. Ridley and Evan Bennett Stephenson of Wheeler Trigg O'Donnell LLP.

The case is Sunflower Condominium Association v. Auto-Owners Insurance Company, case number 1:16-cv-02946, in the U.S. District Court for the District of Colorado.

--Editing by Adam LoBelia.