

Trial Victory

Bad Faith Claim

The Problem

The project was a 2,900 square foot, single family residence with a detached garage and office, located on an 18,000 square foot, sloped lot. The home had suffered flood damage in 3 rooms during the torrential rains of a 100 year storm. Repairs were made, and a claim was filed with the owners' insurance company. While the repairs were being made, the owners decided to have some remodeling and improvement work performed.

The owners felt they had not been paid enough on their water damage claim and sued their insurance company for bad faith. Meanwhile, the insurance company believed that some, if not all, of the damage was caused by: A. defective installation of the roof, and B. flooding that occurred because of defective construction of the drainage system on site. Unfortunately, neither of those scenarios were covered. The insurance company also knew that much of the "repair" work was by choice as part of the owners' remodeling and improvements. The bottom line was that the insurance company estimated the damages between \$10,000 and \$15,000, but the owners wanted \$98,000!

The Solution

Pete Fowler Construction was hired by the insurance company's attorney to (1.) figure out the source or sources of damage and (2.) estimate the cost to repair the damage. We collected, organized, and analyzed an enormous volume of project documents. With 13 depositions and 10 previous estimates, we had our hands full! We interviewed key players and performed a thorough on-site investigation. Throughout the investigation, we found:

1. Interior damage occurred from water that entered the residence at ground level as a result of the insufficient drainage, and to a limited extent due to roof leaks.
2. The owners hired "first responders" to begin the drying of the wetted structure and finishes within one week.
3. Some time later a mold investigation took place. The mold issues were treated, and testing occurred to make sure the levels of mold present were normal.
4. The owners hired contractors (some licensed and some not) to make improvements to the exterior drainage problems surrounding the residence. A design professional (such as an engineer) or building consultant was not involved in assessing the problems or specifying the repairs.
5. Remodeling and improvement of the inside of the residence occurred that far exceed the scope and cost of replacing finishes after the water damage and mold issues had been resolved.
6. There was no attempt by the owners to separate costs for needed repairs and optional improvements.

Once we had all of this information, we prepared our own estimates for different scenarios: flood damage only, all work performed, damages before mold removal, and more. We put together a comparison of estimates from the insurance company, other contractors, and Pete Fowler Construction. Based on our analysis, we came to the conclusion that:

1. The majority of the damage to the residence was due to its being poorly situated on the lot with inadequate drainage and the ground level being too close to, or even above the interior finished floors.
2. The owners should have either: (1) had estimates when the damage occurred, to complete the replacement of the finishes as they were before the damage, or (2) attempted to track and separate the actual costs for the replacement of the finishes required.
3. The total costs for work required, including the "first responders", mold testing, remediation, and finishes replacement to pre-damaged conditions, would have totaled \$30,000-\$50,000.
4. The plaintiff's first expert's testimony is mostly consistent with our exterior observations.
5. The plaintiff's second expert's opinion appears to be incomplete and no help in the analysis of this situation.

We collected our findings and conclusions and delivered them in a plain-English, graphic intensive report. This report, along with key deliverables like our estimate comparison chart and timeline, were used for our deposition and trial testimony. In the end, the jury agreed with our analysis, and our client prevailed in trial.

