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The lawsuit concerned damage caused by Hurricane Irma. Credit: Mia2you/Shutterstock.com.

## South Florida Homeowners Prevail Against Insurer, Alleging It Wrongly Denied Storm-Damage Claim

The defense contended that the roof's damage was a result of wear and tear not related to a storm and therefore was not covered by the homeowners' policy.

January 05, 2022 at 10:47 AM

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By Melissa Siegel

A Boca Raton couple was awarded \$107,000 in a dispute with their insurer over damage to their home.

In March 2019, plaintiff Alyssa Lerner and her husband, plaintiff Jeffrey Lerner, discovered that a leak had damaged their home, which was located in Boca Raton. The leak was a result of damage of the home's roof. The Lerner's suspected that the damage had been created on Sept. 10, 2017, when Hurricane Irma struck the Boca Raton area. The Lerner's sought reimbursement from their insurer, Citizens Property Insurance Corp., but the claim was denied.

The Lerner's sued Citizens Property Insurance. The lawsuit alleged that the Lerner's claim was improperly denied. The lawsuit further alleged that the claim's denial constituted a breach of the insurance contract.

Plaintiffs' counsel contended that Irma damaged some 130 of the Lerner's roof tiles and resultantly caused a leak that damaged the home's kitchen, the home's garage, a bathroom and a bedroom.

The Lerner's expert meteorologist opined that Irma produced sustained winds of 50 to 51 mph, with gusts reaching 90 to 91 mph. The Lerner's expert roofer examined the damaged roof tiles, and he opined that the damage's nature suggested that it had been caused by hurricane-force winds. The Lerner's claimed that they had not experienced a damaging roof leak prior to March 2019.

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Defense counsel noted that the Lerner's homeowners' policy covered only those leaks



Book

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resulting from an exterior opening created by a covered peril, such as a windstorm. The defense contended that the roof's damage was a result of wear and tear not related to a storm and therefore was not covered by the Lerner's homeowners' policy. The defense's expert engineer suggested that the tiles could have been damaged by thermal expansion and extraction, a

product of sunshine. Defense counsel also suggested that foot traffic, created by roof-washing personnel, could have caused or contributed to the tiles' damage.

The Lerner's claimed that the leak damaged their home's kitchen, the home's garage, a bathroom and a bedroom. They sought recovery of \$107,000 for loss of property.

The jury found that Citizens Property Insurance breached its insurance contract. It determined that the Lerner's damages totaled \$107,000.

Plaintiffs' counsel has expressed an intention to move for recovery of attorneys' fees.

**Insurer:** Citizens Property Insurance Corp.

**Plaintiff Experts:** Eduard Badiu Ph.D., P.E., civil, Fort Lauderdale, FL Karl Stephen Smith II, roofing, Melrose, FL Douglas A. Stewart Ph.D., meteorology/climatology, Palm Beach, FL (videotaped deposition presented)

**Defense Experts:** Gene Akers, insurance claims, Huntersville, NC Paul Marsenison P.E., engineering, Fort Lauderdale, FL

**Verdict:** \$107,000

**Case:** Alyssa H. Lerner and Jeffrey C. Lerner v. Citizens Property Insurance Corporation, No. 50-2019-CA-015621-XXXX-MB

**Court:** Palm Beach County Circuit Court, 15th

**Judge:** James Nutt

**Plaintiff Attorneys:** James E. Mitchell; Chavin Mitchell Shmuely; North Miami, FL George O. Mitchell II; Chavin Mitchell Shmuely; North Miami, FL

**Defense Attorneys:** Bartholomew Cozad; Derrevere Stevens Black & Cozad; West Palm Beach, FL Marni Rogalsky; Derrevere Stevens Black & Cozad; West Palm Beach, FL

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