



## Alerts

### Florida's Third DCA Grants Directed Verdict for Insurer on Issue of Finality of a Claim Payment

January 4, 2012

*Insurance Coverage Alert*

*United Property and Casualty Insurance Co. v. Armando Valladares et al.*, 73 So. 3d 310 (Fla. App. 3 Dist. Oct. 19, 2011)

Plaintiff insureds sustained damage to their house from a broken water pipe. They filed a claim with defendant insurer, which was ultimately denied as excluded under the policy. The insureds hired a public adjuster, who disagreed with the insurer's evaluation of the damage and filed a complaint with the Florida Office of Insurance Regulation (FOIR).

As a result of the complaint filed by the public adjuster, the FOIR initiated a proceeding against the insurer. In a consent order, the insurer agreed to compensate the insureds for the claim. The consent order, which disclaimed liability and did not address the specific merits of the claim, imposed an obligation upon the insurer to make payment to the insureds "immediately."

Pursuant to the consent order, the insurer issued a check to the insureds in the amount of \$23,000. The insureds accepted the check without reservation. After receiving the benefit of the insurer's payment, the insureds sued the insurer for breach of contract. They alleged that the insurer had failed to pay for the loss of use of the house during the time that the pipes were broken. According to the insureds, the house was uninhabitable and they were eligible for loss of use benefits under the policy. Although the insureds had not moved out of the house, they alleged that they were inconvenienced by the lack of hot water.

The insurer restated its position that the loss was excluded under the policy and that the dispute was already settled by the \$23,000 payment. The trial court entered summary judgment in favor of the insureds for loss of use benefits and for statutory interest and the parties entered into a joint stipulation for entry of final judgment in the amount of \$46,335.

The Florida Third District Court of Appeal (Third DCA) reversed. The court found that the insureds' coverage claim was settled when they accepted the \$23,000 payment from the insurer. The Third DCA noted that the sole pending claim under the policy was the claim for damage from the broken water pipes, and that by accepting payment without reserving any rights to other claims for damages resulting from the broken water pipes, the insureds accepted an offer for settlement of their claim. The court indicated that the insureds could have objected to the settlement payment and reserved their rights to claim further damages due to loss of use; however they did not.

The Third DCA held that because the payment was intended to resolve the coverage dispute from the water loss, and the payment was accepted without reservation, the payment was an accord and satisfaction as to the losses known and alleged at that time. Having accepted the benefits of the payment, the insureds could not disclaim the settlement. The Third DCA noted that because the insureds did not allege additional facts or losses that were not at issue in the original claim, the accord and satisfaction fully covered the pending coverage dispute.

#### Practice Note

When payment of a claim has been offered and accepted by an insured, insurance companies should be prepared to move for immediate dismissal and/or judgment on the pleadings if a lawsuit is later filed for the same loss under the same or a similar set of facts and circumstances. Based upon the Third DCA's opinion, an insurance company may argue that



no further payment is due because payment has been accepted, essentially operating as accord and satisfaction of the claim. However, note that the Third DCA's opinion provided two instances where an insurance company cannot rely upon this argument. The first is when an insured reserves the right to claim further damages and the second is when additional fact or losses, not at issue in the original claim, are alleged.

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*