



Alerts

Insurance Coverage Denial Proper Where Insured Did Not Comply With His Policy's Post-Lost Duties

November 7, 2011

Insurance Coverage Alert

Edwards v. State Farm Florida Insurance Company, 64 So. 3d 730 (Fla. 3d DCA June 15, 2011)

Plaintiff insured reported a claim to defendant, his property insurer, after sustaining damage to his home from Hurricane Frances on September 4, 2004. The insurer determined that the damages were beneath the insured's deductible, and therefore made no payment on his claim.

In June 2008, the insured submitted a supplemental claim to the insurer, seeking payment for his Hurricane Frances claim. The insured submitted a representation letter from his public adjuster, which incorrectly referred to the insured's nonexistent Hurricane Wilma loss. Attached to the public adjuster's letter was an estimate for \$52,000, including \$13,000 for a complete roof replacement.

In July 2008, the insurer's adjuster inspected the insured premises and found no damage to the roof. The insured's adjuster then sent the insurer an unsigned October 2006 contract *proposal* from a roofer summarizing the cost to install a new roof for \$9,300 (about \$3,000 less than the cost submitted by the public adjuster), but with no contact information for the roofer and no cost for the completed roof. As the insured did not respond to questions about these irregularities, the insurer requested a sworn proof of loss and an examination under oath (EUO).

On February 2, 2009, the insured sent his own sworn proof of loss form to the insurer, but did not provide the requested documents or information. The insurer never received additional documents or information from the insured. As to the EUO, the insured never appeared for it, and the insurer was notified that the insured had retained counsel. The insured sued the insurer in June 2009 contending that it had breached the insurance policy by failing to pay his claim.

The appellate court upheld the trial court's order denying coverage. The court cited the policy provisions requiring the insured to provide documents and submit to an EUO. It noted that the insurer had made specific basic document requests that the insured never satisfied, and that the insured had ignored the insurer's request for an EUO. Thus, the court determined, the insurer was entitled to judgment as a matter of law.

Practice Note

As a practice note for first party property practitioners, the insured should be counseled to comply with its insurer's reasonable requests for information and documents, and to provide a sworn proof of loss and examination under oath when requested. Noncompliance by an insured with an insurer's reasonable material request(s) could be found to result in a waiver of the insured's right to any insurance proceeds under his or her policy.

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