



## Alerts

### Insured Not Prohibited From Having a Public Adjuster Present During Examination Under Oath

June 20, 2012

*Insights for Insurers*

In *Nawaz v. Universal Property & Casualty Ins. Co.*, No. 4D10-4288 (June 13, 2012), the trial court ruled that an insurance policy operated to exclude public adjusters from attendance during an examination under oath. Florida's Fourth District Court of Appeals reversed the decision and remanded the case.

The policy stated in pertinent part:

#### SECTION I- CONDITIONS

...

2. Your Duties After Loss. In case of a loss to covered property, you must see that the following are done:

...

f. As often as we reasonably require:

...

(3) Submit to examination under oath, while not in the presence of any other "insured," and sign the same...

It specifically defined "insured" as:

3. "Insured" means you and residents of your household who are:

a. Your relatives; or

b. Other persons under the age of 21 and in the care of any person named above.

The trial court held that the policy would exclude public adjusters from attendance during examination under oath, reasoning that any restriction excluding only other "insureds" (as specifically defined) would lead to results "such as allowing the presence of the press, other insurance companies, or members of the general public."

The appellate court disagreed, holding, "by ignoring the plain language of the contract, the trial court essentially rewrote the contract." The court referenced established case law holding that "[w]here the language of the contract is clear and unambiguous, the court can give it no meaning other than that expressed." The appellate court reiterated the words of Judge Learned Hand, who wrote, more than 100 years ago:

A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. A contract is an obligation attached by the mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent. If, however, it were proved . . . that either party, when he used the words, intended something else than the usual meaning which the law imposes upon them, he would still be held, unless there were some mutual mistake, or something else of the sort.



## Practice Note

First-party practitioners should always look to the insurance policy's plain language to determine whether any particular persons or entities would be excluded during an examination under oath. Notwithstanding of the holding in this particular case, it is essential to remember that Fla. Stat. § 626.854(3) prohibits a public adjuster from giving legal advice.

*Nawaz v. Universal Property & Casualty Ins. Co.*, No. 4D10-4288 (June 13, 2012)

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