

GA Federal Court Holds That Jury, Not Judge, Generally Must Decide Whether Notice Was Given “As Soon as Practicable” Under First-Party Property Damage Policies

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On October 6, 2021, the United States District Court for the Middle District of Georgia addressed this issue in *Vintage Hospitality Group LLC v. National Trust Insurance Company*, Case No. 3:20-cv-90-CDL, 2021 U.S. Dist. LEXIS 192651 (M.D. Ga. Oct. 6, 2021). In *Vintage Hospitality*, a July 2018 hailstorm damaged the roof of a hotel owned by the policyholder. The policyholder did not discover leaks from the hotel roof until two months later, in September 2018. The policyholder, not realizing that the hailstorm had caused the leaks, unsuccessfully attempted to repair the leaks. Eventually, in February 2020—19 months after the hailstorm and 17 months after the policyholder discovered the leaks—the policyholder hired a construction company to evaluate the roof. It was not until then that the policyholder learned that the hotel had sustained hail damage from the July 2018 storm. The policyholder notified its July 2018 first-party property damage insurer a few days later.

The insurer filed a motion for summary judgment on the basis that the policyholder did not provide notice “as soon as practicable,” as required by the policy. The court, holding that the jury generally must decide whether an insured gave notice “as soon as practicable,” denied the motion. The court explained that, under Georgia law, there are two considerations for determining whether an insured gave notice “as soon as practicable”: the length of delay before notification and the justifiability of the excuse for any such delay. The second consideration raised the question of “whether it was reasonable for [the policyholder] not to have made the connection [between the July 2018 hailstorm and the leaking roof] earlier.” According to the court, a judge should not arrogate the resolution of such a question to himself and should instead allow the jury to decide it. Although the court recognized that judges can sometimes determine that an insured failed to give notice “as soon as practicable” as a matter of law, it observed that cases in which judges made such a determination typically involved “a substantial unjustified delay *after* the insured became aware of the insured occurrence.”

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