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WIND-DRIVEN RAIN INSURANCE COVERAGE: A POST-IRMA REVIEW

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Over the last few years, Florida policyholders have seen an increasing trend of insurance companies relying on wind-driven rain exclusions. Many policies now exclude rain damage to the interior of a home or business unless an “opening” first occurs in the roof from wind or hail. Commonly, the insurance company will argue it is an insured’s burden to prove the roof damage was caused by wind or hail and that the insured cannot overcome the opinion of the insurer’s own hand-picked engineer. Despite experiencing the overwhelming impact of Hurricane Irma, some Florida policyholders found their claims denied based on this provision.

Recently, Florida’s Third DCA entered the fray and provided its opinion on the issue. In Garcia v. First Community Insurance Company, the Court reversed summary judgment entered in favor of an insurance company because genuine issues of material fact existed as to whether rain damage resulted from hail, wind, or wear and tear to the roof.

The subject insurance policy included a provision that excluded damage caused by rain unless a covered peril first damaged the building causing an opening in a roof or wall and the rain entered through that opening. During the investigation of the claim, the insurance company retained an engineer that concluded the rain damage resulted from age and wear and tear to the roof. The insurance company then denied coverage.

Once in litigation, the insurance company filed a motion for summary judgment and argued that the claimed damages were not subject to coverage under the policy exclusion. The insurance company relied on the conclusions of its engineer. In opposition to the motion, the insured retained her own engineer, who concluded that the damages observed are “systematic of high rain and/or wind events that occurred the days leading up to and on the D.O.L. The dynamic force of winds caused an opening in the roofing system by uplifting and debonding the shingles… through which rain water was able to enter.”

Despite a clear factual dispute over causation, the trial court entered summary judgment in favor of the insurance company. On appeal, the Third DCA agreed with the insured that the trial court erred in granting summary judgment in favor of the insurance company where the conflicting reports of the parties’ experts established a genuine issue of material fact as to the cause of loss.

The opinion in Garcia does not break new ground. However, it affirms long standing authority that summary judgment is not available when two parties dispute the cause of damages. An insurance company cannot prevail on summary judgment simply because its engineer concluded the damage was excluded, where the insured has provided a counter-opinion from their own expert. The opinion further shows the importance of hiring professionals to evaluate and document your loss in the case of wind damage to your property.

Should you have any questions or concerns about how this decision impacts your insurance coverage, please do not hesitate to contact Michael J. Higer, Gina Clausen Lozier, or Christopher Choquette with the firm’s Insurance Dispute Resolution Team.

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