ALTERNATIVE DISPUTE RESOLUTION FOR YOUR HURRICANE CLAIM

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It has been almost two years since Hurricane Irma hit and eight months since Hurricane Michael. While some Florida policyholders are still waiting for a decision from their insurance company, the majority of claims have either been paid or denied. As a policyholder, what happens when you disagree with the amount paid by the insurance company or dispute the denial of the claim? As an alternative to pursuing litigation, there are several options that may be available to you.

Prompted by the need for effective, fair, and timely handling of property insurance claims, Florida's Department of Financial Services created a non-adversarial alternative dispute resolution procedure to mediate claims. Early mediation through this program can help homeowners and commercial residential policyholders avoid lengthy litigation. It also provides policyholders with an opportunity to sit down with the insurance company and discuss a resolution for the claim.

Pursuant to Florida statute, insurance companies are required to notify policyholders of their right to participate in this mediation program. If they fail to notify a policyholder of the right to mediation, the insurance company cannot then compel the policyholder into appraisal as a precondition to legal action.

Appraisal is another alternative dispute resolution that may be available in some policies to resolve disputed claim payments. In appraisal, both sides select their own appraiser to value the loss and determine the scope of damages. The two appraisers choose an umpire. If the appraisers are unable to reach a resolution, they submit the dispute to the umpire. A decision agreed to by any two will set the amount of loss. Like mediation, appraisal offers a potentially quicker and most cost-effective alternative to litigation.

For appraisal to be available, there first must be an acknowledgment of coverage by the insurance company. Once the insurance company opens coverage for a claim, appraisal can be invoked. The appraisers are then tasked with determining the amount of loss. In doing so, they are charged with determining what damages were caused by the loss. Any disputes over causation are appropriate for the appraisers to determine. However, any issues over coverage, or the interpretation of policy language, are reserved for determination by the court.

Increasingly, commercial policies are including arbitration provisions as an alternative dispute resolution. In arbitration, the dispute over coverage or amount of loss is determined before a third-party arbitrator or arbitration panel. Arbitration agreements are enforceable, and the results are binding.

Because arbitration provisions are enforceable, every commercial policyholder should review their policy and know whether it includes arbitration. Many arbitration provisions mandate that arbitration occur and preclude the right to file a lawsuit. Some of these arbitration provisions even require the parties to apply the laws of another state during the arbitration process. Commercial policyholders should understand whether their policy will force them to arbitrate under a different state's laws. This could significantly impact the recovery available to you.

The options discussed above provide policyholders with alternatives to litigation. However, every claim is different and likewise each solution to your disputed claim may be different. Before deciding whether one of these alternative dispute resolutions are right for your claim, you should speak with an insurance profession to discuss your options.

Should you have any questions or concerns about alternative dispute resolution options available to you, please do not hesitate to contact Michael J. Higer of Berger Singerman's Insurance Team.

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