FLORIDA APPELLATE COURT SAYS SUBSTANTIAL COMPLIANCE SUFFICIENT

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A Florida appellate court issued a significant opinion for Florida's policyholders. In Himmel v. Avatar Property & Casualty Insurance Company, the Fourth District Court of Appeal reversed a summary judgment a trial court had entered against an insured for failing to comply with the conditions in the insurance policy and ruled there were factual issues remained as to whether the insured substantially complied with the policy's post loss conditions.

In Himmel, the insured reported a claim to his insurance company two days after the loss occurred. The insurance company requested that the insured submit a sworn proof of loss, which the insured timely submitted. The insurance company, however, rejected the proof of loss because it was not on their form and "deficient in several, different respects, and thus, cannot be accepted."

The insurance company then requested that the insured appear for an examination under oath. At that point, the insured retained counsel and requested that the examination under oath be rescheduled for a mutually convenient time. The insurance company refused the request. The insured renewed the request several more times, but the insurance company insisted that the examination under oath could not be rescheduled.

To avoid breaching the policy, the insured filed a petition for declaratory relief requesting a determination from a trial court as to whether the policy allows an examination under oath to be rescheduled. In response to the petition, the insurance company moved for summary judgment arguing that the insured failed to appear for an examination under oath, failed to provide prompt notice, and failed to provide sworn proof of loss. The trial court granted summary judgment in favor of the insurance company.

The appellate court reversed and concluded that the insured sufficiently showed he cooperated to some degree and/or provided an explanation for his noncompliance which in turn created a question of fact as to whether there was a willful and material breach of the examination under oath and proof of loss requirements of the policy.

The appellate court further held summary judgment was not appropriate on the issue of late notice because the evidence demonstrated that the insured was actively attempting to mitigate damages by fixing the leak before reporting the loss. Notice is timely when it is provided with "reasonable dispatch and within a reasonable time in view of all of the facts and circumstances of the particular case."

This decision highlights the importance of having counsel to understand and evaluate the obligations of the insured and to properly address an insurance company's requests for policy compliance.

Should you have any questions or concerns about how this decision could impact your claim, please do not hesitate to contact Michael J. Higer, Gina Clausen Lozier, Gavin Gaukroger, or Christopher Choquette on our Insurance Recovery and Dispute Resolution Teams.

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