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Analysis

Hurricane Irma coverage-lawsuit reversal pokes holes in Lloyd's defense

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The mantra "delay, deny, defend" is often referenced in critiques of insurance claims handling. While it would be facially improper for an insurer to delay a coverage decision to gain a tactical advantage, empirical examples nonetheless exist. This very dynamic was addressed by Florida's Fourth District Court of Appeals when it handed policyholders a win in *Hypoluxo Mariner's Cay Condo. Ass'n, Inc. v. Underwriters at Lloyd's London* reversing a trial court order dismissing a condominium association's Hurricane Irma coverage lawsuit against its property insurer.

Delay to run the statute of limitations

Following Hurricane Irma, a condominium association suffered roof and exterior envelope damage, reported an insurance claim, and submitted a sworn proof of loss to its property insurer in compliance with Florida law. The statute establishes a time-frame within which a policyholder must submit a claim for hurricane damage.

The insurer acknowledged the claim but did not make a coverage decis within 90 days, as required at the time by Florida law, which described an insurer's duties when receiving and adjusting a claim. A separate Florida statute governed when a policyholder could bring a lawsuit against its property insurer and made receipt of the insurer's coverage decision a condition precedent to filing suit. As a result, the association could not file an action until the insurer made its coverage determination.

Florida applies a five-year statute of limitations to actions against property insurers. One month after that statute of limitations expired, the insurer issued its coverage decision, denying coverage for the damage. Three days later, the association filed suit.

The insurer moved to dismiss. The association then amended its complaint to allege that the insurer delayed its coverage determination, including assertions that the timing affected the association's ability to file suit within the limitations period.

The insurer again moved to dismiss the action, which the trial court granted.

The appellate court reverses

The association appealed, arguing that the trial court failed to consider whether there was an argument for equitable avoidance of the statute of limitations. The Fourth DCA agreed with the association.

The Fourth DCA explained that dismissal is improper where a complaint "suggests the possibility" that the plaintiff can allege facts supporting a limitations avoidance defense, which the court found sufficient at the pleading stage. Specifically, the association alleged that:

- It timely reported the loss and submitted a sworn proof of loss;
- The insurer failed to make a timely coverage determination; and

The insurer repeatedly demanded investigation not required by the policy before it issued a coverage decision.

The Fourth DCA further explained that at the motion to dismiss stage, the trial court does not decide whether the defense ultimately applies; it asks whether the complaint alleges facts suggesting it could apply. The court also held that the insurer's contention that the association was responsible for any delay was an affirmative defense that generally should not be resolved on a motion to dismiss. The Fourth DCA therefore reversed and remanded.

Coverage litigation takeaways

This case illustrates issues that can arise when limitations periods intersect with the It is prudent for policyholders and their counsel to evaluate the applicable limitations period and consider available options for preserving potential claims, recognizing that requirements and timing considerations can vary by jurisdiction and case-specific facts. Policyholders may also consider that, beyond statutory limitations periods, some insurers may include a shorter contractual limitations period in the policy. Courts often evaluate the enforceability of such provisions based on governing law and the particular circumstances presented. For example, these provisions are not enforceable in Florida due but are enforceable in other jurisdictions.

Separate from limitations periods, policyholders should be aware that some jurisdictions may impose statutory pre-suit requirements and may require compliance with specific conditions before filing suit.

Policyholders should consider whether a tolling agreement would be an appropriate tool to extend a limitations period. Such agreements are or avenue for addressing timing concerns related to limitations periods.

Whether to pursue a tolling agreement — and the terms of any such agreement — will depend on the specific facts, applicable law, and the parties' respective positions. As hurricane season begins, Hypoluxo is a reminder to policyholders to track deadlines, document claim activity, and stay proactive to preserve claims.

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