Insurance Coverage

Appraisal

State Farm Florida Insurance Company v. Fernandez, 211 So. 3d 1094 (Fla. 3d DCA 2017)

The Third District reversed and found that the trial court erred in entering an order compelling an appraisal where the insureds failed to comply with their post-loss obligations. Specifically, the insureds failed to comply by failing to give immediate notice of alleged additional damage to the property; failing to protect the property from further damage; failing to keep an accurate record of expenditures; failing to provide the insurance company with any requested records and documents to support the supplemental claim; and failing to submit a sworn proof of loss within 60 days after the loss.

Attorney's fees

Joyce v. Federated National Insurance Company, 228 So. 3d 1122 (Fla. 2017)

The Supreme Court quashed a decision of the Fifth District that reversed the trial court's award of a contingency fee multiplier. The Supreme Court held that the application of a contingency fee multiplier to an award of attorney's fees to a prevailing party is not limited to "rare" and "exceptional" circumstances. They further held that the trial court properly applied a 2.0 contingency fee multiplier to an award of attorney's fees to insureds that prevailed in an action against its insurance company upon a finding that the relevant market required a contingency fee multiplier for the insureds to be able to obtain competent counsel; the insured's attorney could not have mitigated the risk of non-payment; the case was a complex commercial case; and the likelihood of success at the outset was even at best.

Forthuber v. First Liberty Insurance Corporation, 229 So. 3d 896 (Fla. 5th DCA 2017)

Insured filed suit against the insurance company and prevailed. As such, the Fifth District held that where the attorney representing the insured had worked at a law firm that originated the claim and then continued to represent the insured after leaving that firm, it was error for the trial court to refuse to consider hours expended by the attorney while working at the prior firm in calculating the attorney's fee award. The Fifth District also held that the trial court erred in

limiting pre-judgment interest by only including the interest accrued through the evidentiary fee hearing rather than the date the final judgment was entered.

TRG Columbus Development Venture, Ltd., v. Sifontes, 230 So. 3d 541 (Fla. 3d DCA 2017)

The Appellate Court affirmed the trial court's award of attorney's fees including a contingency fee multiplier for trial court services. Thereafter, the Appellate Court granted a Motion for Appellate Attorney's Fees and it remanded the matter to the trial court for a determination of the amount of the appellate fees. The trial court found that it was not bound by the law of the case to award a multiplier when determining the amount of the appellate fees.

Florida Farm Bureau Casualty Insurance Company v. Gray, 232 So. 3d 478 (Fla. 1st DCA 2017)

The insured prevailed in a declaratory judgment action brought by the insurance company. The attorney's fee agreement entered into between the insured and their attorneys provided that the attorney would be paid a normal hourly rate whether the case was won or lost. In the fee agreement, they noted that they may record higher hourly charges and in the event the court were to award legal fees and costs, any higher amount awarded by the court including multipliers with the amount of the legal fees. In awarding attorneys fees to the insured, the First District found that the trial court erred in applying a contingency risk multiplier because the fee agreement between the insured and his attorney was not a contingency fee agreement nor was it a partial contingency fee contract.

Bad faith

GEICO General Insurance Company v. Harvey, 208 So. 3d 810 (Fla. 4th DCA 2017)

On August 8, 2006, GEICO's insured got into a car accident with the decedent. The insured's vehicle was registered in both his name and his business's name. The insured, Harvey, reported the claim to GEICO which had a $100,000 liability policy in effect. Three days later, GEICO advised its insured in writing that the claim by the decedent's Estate could exceed the insured's policy limits and that Harvey had the right to hire his own attorney. Harvey subsequently retained his own attorney to protect his uninsured excess exposure.

On August 14, 2006, an employee of the attorney retained by the decedent's Estate contacted GEICO and advised of their representation. According to the employee, she asked the adjuster to arrange for a statement from Harvey regarding his personal and business assets and whether he was acting within the course and scope of his business at the time of the accident, as well as to determine whether there was any other potential insurance coverage for the claim.

The employee claimed that the adjuster refused to make the insured available for a statement; however, the adjuster stated that she would never have refused such a request. At no time did the Estate's attorney provide a deadline for obtaining this statement nor was the adjuster told that the insured's statement was a prerequisite to settling the insured's claim. On August 17, which was 9 days after the accident, GEICO sent the Estate a Release along with check for the $100,000 policy limits even though the Estate had never demanded the policy limits. On August 23, the insured met with his personal counsel and brought documentation to the meeting showing that the insured's business was the only asset available to the Estate and that it only had $85,000 in its accounts.

The following day, the Estate's attorney sent a letter to the adjuster in response to the check and Release and indicated that she had declined the Estate's request to make the insured available for a statement and renewed its request for the insured's financial information. The adjuster received this letter on August 31, faxed it to the insured and verbally discussed its contents with him that same day. According to the insured, this was the first time he learned that the Estate wanted a statement. The adjuster's supervisor also instructed her to contact the Estate's attorney to find out what kind of statement was wanted and the attorney responded that he wanted to determine what other assets or coverage the insured had available to him. The Estate's attorney then sent a letter to the adjuster documenting the conversation and the adjuster then immediately forwarded that letter to the insured advising him of the Estate's request. The adjuster also sent the insured a sample Affidavit that had blanks in it in which the insured could input his available assets and coverage in order to provide the information to the Estate. Notably, in renewing its request for a statement from the insured, the Estate never provided any deadline or other time frame within which the statement was to be provided.

The very next day, the insured contacted the adjuster and advised her that his attorney was not available until September 5 and asked that adjuster to let the Estate's attorney know that the insured was working on preparing the financial statement. Although the adjuster's supervisor instructed her to relay the insured's message to the Estate, the adjuster did not do so. Despite the insured's attorney

return on September 5 and despite the insured knowing that the Estate wanted a statement, neither the insured nor his attorney took any further action to provide the Estate with a statement.

On September 13, the Estate filed a wrongful death lawsuit against the insured and returned GEICO's $100,000 check. The Estate then received a $8.47 million dollar judgment against the insured. After the judgment was entered against him, the insured brought a bad faith claim against GEICO. The trial court denied GEICO's Motion for Directed Verdict and the jury subsequently entered a verdict in favor of the insured.

The Fourth District reversed and held that the trial court erred in denying the Motion for Directed Verdict where the evidence taken showed that GEICO unconditionally tendered its policy limits to the Estate nine days after the accident and that the insurance company notified Harvey that the Estate wanted a statement 17 days after their request was received by the claims adjuster and the insured subsequently failed to provide a statement to the Estate despite having an opportunity to do so before suit was filed. They also held that even if GEICO's conduct was deficient, its actions did not cause the excess wrongful death judgment rendered against its insured.

Claims Administration statute

GEICO General Insurance Company v. Mukamal, 230 So. 3d 62 (Fla. 3d DCA 2017)

GEICO undertook the defense of an insured in a wrongful death action and subsequently attempted to decline coverage based upon a coverage defense of breach of duty to cooperate. The Third District held that GEICO could not do so because it failed to comply with the Claims Administration Statute; Florida Statute §627.426 because it did not refuse to defend the insured within 60 days of its reservation of rights and could not obtain either a non-waiver agreement from the insured or the insured's agreement to the appointment of an independent counsel to represent the insured because the insured had absconded. As such, the court concluded that GEICO waived its coverage defense by continuing to defend the insured.

Construction defect notices trigger CGL coverage

Altman Contractors, Inc. v. Crum & Forester Specialty Insurance Company, 232 So. 3d 273 (Fla. 2017)

Altman Contractors, Inc. was the general contractor for a condominium and was insured by Crum & Forester under a general liability policy. This policy created a duty to defend Altman in any "suit' as defined by the policy. The property owner served Altman with several notices under Chapter 558 of the Florida Statutes which has a statutory process for resolving construction defect claims that are a condition precedent to filing a lawsuit. Based upon a certified question from the United States Court of Appeals for the Eleventh Circuit, the Florida Supreme Court held that the notice and repair process set forth in Chapter 558 of the Florida Statutes constitutes a "suit" within the meaning of the commercial general liability policy and, therefore, triggered a duty to defend Altman.

Coverage by Estoppel

Progressive Express Insurance Company v. Anzualda Brothers, Inc., 208 So. 3d 1289 (Fla. 1st DCA 2017)

In order to prove an insurance coverage by estoppel claim, the Plaintiff must prove (1) the Defendant company made a representation of material facts; (2) the Plaintiff reasonably relied on that representation of material fact; and (3) the Plaintiff was prejudiced by its reliance. In this case, the First District determined that the trial court improperly found coverage by estoppel because the insured failed to prove prejudice.

FIGA

Morrison v. Homewise Preferred Insurance Company, 209 So. 3d 682 (Fla. 5th DCA 2017)

The issue presented in this case was whether an insured, who had filed a first-party action to recover policy benefits from the insurance company prior to it becoming insolvent, must file suit against FIGA within the limitation periods of these statutes to recover under the FIGA Act. The Fifth District held that an insured who has filed a first-party action to recover policy limits against its insurer prior to becoming insolvent is not required to file suit against FIGA within the

limitations period in order to recover under the FIGA Act. As such, it ruled that the insured's Motion to Amend the Complaint and substitute parties should have been granted and/or suit should have been allowed to proceed against FIGA.