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NEWS & EVENTS

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Traub Lieberman Partner Burks A. Smith, III and Associate Kathryn Keller Win Summary Judgment on Late Reported Hurricane Irma Case in South Florida

Related Attorneys: Burks A. Smith, III, Kathryn Keller

On April 26, 2021, Traub Lieberman Straus & Shrewsberry LLP Partner Burks A. Smith, III and Associate Kathryn A. Keller secured Summary Judgment on behalf of a major homeowners' insurer in a breach of contract action in the Seventeenth Judicial Circuit in and for Broward County, Florida. The underlying claim involved a late reported Hurricane Irma claim for roof damages and interior water damages at the Plaintiffs' residence, allegedly resulting in $85,943.02 worth of damage to the insured property. The insurance claim was reported to the insurer eighteen months after the alleged date of loss. During the inspection, the insurer's Field Adjuster observed wear, tear, deterioration, thermal expansion, poor workmanship, mechanical damage and prior repairs to the roof and determined that the damage to the interior of the residence was due to long-term exposure to moisture which entered the dwelling through sections of the roof which were improperly maintained or constructed, prompting the carrier to fully deny the claim. The Plaintiffs then filed a breach of contract action, alleging that the insurer breached the Policy by denying their claim.

The Traub Lieberman team argued that Plaintiffs' Policy with the insurer imposes a duty on the Plaintiffs to comply with the Duties After Loss conditions of the Policy, including the requirement to provide prompt notice of the loss and to exhibit the damaged property. As mentioned above, the Plaintiffs provided notice of the claim eighteen months late and performed various repairs prior to notifying the insurer of the claim. After the close of discovery, Mr. Smith and Ms. Keller filed a Motion for Summary Judgment on behalf of their client, based on the late reporting and failure to exhibit the damaged property. Defense counsel further argued that Plaintiffs had the burden of proving that the insurer was not prejudiced in its investigation of the claim, due to the violations of the Conditions of the policy.

In Florida, when an insured fails to comply with their Duties After Loss, a presumption of prejudice to the insurer arises. *Bankers Ins. Co. v. Macias,* 475 So. 2d 1216, 1218 (Fla. 1985)). In order to recover, Plaintiffs bear the burden of overcoming the presumption, and must prove that no prejudice existed. *Id.* Traub Lieberman's comprehensive arguments successfully reasoned that the Plaintiffs' failure to timely report the claim prejudiced the insurer by prohibiting the insurer from being able to independently validate the loss and/or distinguish between multiple causes of loss. Traub Lieberman also asserted that Plaintiffs did not meet their burden to prove that the insurer was not prejudiced by the Plaintiffs' failure to comply with the Duties After Loss provision of the Policy. The Motion cited numerous cases and extensive analysis supporting the insurer's position.

Seventeenth Judicial Circuit Judge, Carlos Rodriguez, issued an Order Granting Defendant's Motion for Summary Judgment on May 10, 2021. Judge Rodriguez agreed with the Traub Lieberman team's assertions that Plaintiffs violated the Conditions of the Policy via their late reporting of the claim. The Court noted that no evidence was proffered by Plaintiffs to explain the delayed reporting. The Court further held that the eighteen month delay in notifying the insurer of the loss was unreasonable. Accordingly, the Court ruled that Plaintiffs did not provide prompt notice of the loss as a matter of law.

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Once late reporting was established, presumption of prejudice to the insurer arises under Florida law, which Plaintiffs are required to rebut. Plaintiffs contended that a question of fact existed as to whether the delay prejudiced the insurer's ability to independently validate and determine the cause of the damage. Plaintiffs also argued that, since the insurer rendered a coverage decision after its investigation, there was no prejudice from the delayed reporting. Plaintiffs further asserted that an engineer report provided by Plaintiffs indicated that there was no prejudice from the delayed reporting. The Court ultimately agreed with Traub Lieberman's arguments that the insurer's issuance of a coverage determination and Plaintiff's engineer report did *not* rebut the presumption of prejudice to the insurer, and most importantly, did not create a genuine issue of material fact.

The Court further held that, if anything, Plaintiffs' failure to allow the insurer to perform a timely inspection of the property prejudiced the insurer's ability to investigate the claimed damages, in particular the interior water damage, as this was due to a slow leak. Plaintiffs could not proffer any record evidence to rebut the presumption of prejudice against the insurer. As such, the insurer's Motion for Summary Judgment was granted.

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