TRAUB LIEBERMAN

NEWS & EVENTS

May 31, 2023

Traub Lieberman Partner Katie Keller and Associate Steven Hollis Obtain Summary Judgment Based on Plaintiff's Failure to Comply with Policy Conditions

Related Attorneys: Kathryn Keller

Traub Lieberman Partner Katie Keller and Associate Steven Hollis obtained summary judgment on behalf of a major homeowners' insurer in a breach of contract action in the Circuit Court for the Ninth Judicial Circuit in and for Osceola County, Florida. The underlying claim involved a water loss in the kitchen of the Plaintiff's property allegedly resulting in substantial damage to the home necessitating renovations throughout the residence. The claim was reported seventeen days after the reported date of loss by Plaintiff's counsel. The Plaintiff had retained counsel and two vendors before giving notice to the insurer. In addition, the insurer's field adjuster was not provided the opportunity to inspect the plumbing materials which had been allegedly damaged. Specifically, the bottom panel of the sink kitchen cabinet box had been removed. The insurer retained an engineer, who concluded that the removal of the damaged property hindered the ability of the engineer to determine their conditions prior to removal or whether exposure from waste arm leakage occurred. It was later learned that the damaged plumbing fixtures and the bottom of the cabinets had been thrown out by the contractors, which all happened before the claim was reported to the insurer. The insured also failed to provide a signed, sworn proof of loss within sixty days after the loss.

Ms. Keller and Mr. Hollis argued that Plaintiff's Policy with the insurer imposes a duty on the Plaintiff to comply with the Duties After Loss Conditions of the Policy, including the requirement to provide immediate notice of the loss, show the damaged property, and provide a signed, sworn proof of loss within sixty days after the loss. As mentioned above, the Plaintiff had retained counsel and two vendors before providing notice of the alleged loss to the insurer. Therefore, Ms. Keller and Mr. Hollis argued that notice was not timely provided. The Court ruled in the insurer's favor on this issue. The Court also ruled in the insurer's favor on the fact that the Plaintiff never provided a sworn proof of loss to the insurer, despite being represented by counsel. Additionally, the Court made a specific finding that the insurer was prejudiced by the inability to inspect the damaged property because Plaintiff who was working with counsel and vendors experienced in handling insurance claims, made repairs and either discarded, or authorized the discarding of, the alleged damaged cabinetry components before the insurer could inspect the property. The Plaintiff failed to rebut the presumption of prejudice to the insurer.

The Court concluded that the Plaintiff's failure to comply with the Policy Conditions precluded recovery under the insurance policy. The Circuit Court Judge issued his Order Granting Defendant's Motion for Summary Judgment on May 30, 2023. Because a Proposal for Settlement was served upon the Plaintiff and was not accepted, the insurer plans to seek its attorneys' fees and costs incurred defending the litigation.

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