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WIND DRIVEN RAIN AND COVERAGE ISSUES

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When a storm damages someone's home or commercial property, it is typically a combination both of wind *and* rain that causes the most property damage. While many policyholders assume that their property insurance policies cover water damage to the interior of a home or building caused by storms, many Insurers claim that no coverage exists for such a loss. This is because many property insurance policies contain a limitation or exclusion for damage caused by rain driven into a building by wind, or water damage to the interior of property **unless** damage is first sustained to the roof or envelope (i.e., windows and doors) of a building through which the water enters and causes damage. This policy exclusion is known as the wind driven rain exclusion.

Generally, if the Insurer believes that the rain entered the interior of a premises through damage created by wind, then the Insurer agrees the damage is covered. However, it is becoming increasingly common to see Insurers restrict coverage for interior damage caused by rain by claiming that water entered the structure as a result of lack of maintenance and/or pre-existing damage, and not as a result of storm (or wind) damage.

This issue is of particular importance when a hurricane hits and causes damage to insured property. By nature, hurricanes are a combination of wind *and* rain; it this combination that causes the most damage to properties. The intent of the Florida Statutes with regard to property insurance, and most property insurance policies, is to provide coverage for all hurricane damages. Moreover, most policies even specifically provide coverage for hurricanes. However, given that most property insurance policies today include some form of wind driven rain limitation or exclusion, many Insurers will take extreme measures to limit or prevent coverage for this type of damage caused by a hurricane. Insurers retain outcome -oriented experts and consultants to prove, for example, that issues of maintenance existed prior to the hurricane, or even try to convince policyholders that hurricane conditions did not exist, and that therefore the damages are limited or excluded from coverage under the policy based on the wind driven rain limitation or exclusion. The Insurer's do this, despite the fact that the there are no reports indicating lack of maintenance or pre-existing damage, and that the Insured's are paying premiums based on structures with no maintenance or damage issues. Nonetheless, when claims are filed, the Insurers are erroneously raising the exclusion in an effort to minimize payments.

Many Insured's are not aware of the wind driven rain exclusion until Insurer's attempt to limit coverage. It is important for Insureds to understand their rights and obligations provided in their property insurance policies, as well as the coverage provided for, specifically sections that exclude or limit coverage. Additionally, in anticipation of the Insurer's tactics regarding the exclusion, Insured's can take measures such as documenting the condition of their property before a loss. While documentation alone may not deter Insurer's from claiming the exclusion, it will be useful evidence that Insureds can use to help facilitate a recovery.

OLD ASSIGNMENT OF BENEFITS NOW DOA AFTER NEW BILL PASSES

CRAIG APPLEBAUM, SENIOR VICE PRESIDENT, GLOBALPRO

Florida's Legislature recently passed HB 7065, now codified as Florida Statute §627.7152. The freshly minted statute makes large changes concerning the use of assignment of benefits ("AOB") agreements. This has a widespread effect for the insurance industry as AOB's have become commonly used by contractors doing work on behalf of an Insured.

Important in understanding the statute is knowing what is covered. Under the statute, an "Assignment Agreement" is essentially defined as any instrument by which post-loss benefits under a property insurance policy are assigned to or from a person providing services to mitigate and restore the property. This of course covers most mitigation contractors, as well as those contractors retained to restore the property, such as a roofer. With the statute comes more rules than ever before. While the Insurance companies are credited with lobbying this bill into existence in an effort to stop illicit activities and loopholes between attorneys and contractors, what the statute has also done is place more responsibility on Insureds to understand the application of Florida law.

For example, the assignment does not transfer or create authority to adjust, negotiate, or settle any portion of a claim to a person not authorized to do so under the statute. Consequently, a contractor will not have the authority to negotiate. Therefore, the Insurer will be the sole arbiter in determining what of the contractor's submitted work will be covered and at what cost. This has the potential to stick Insureds with the bill for mitigation services and repairs that are necessary, yet deemed excessive by the Insurer. Thus, there is an increased need for Insureds to retain insurance experts to help advocate on their behalf throughout the claims process. As a result, Insureds must be careful about the repairs being offered, and ensure that they are deemed fully covered before any work is commenced.

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The recently codified changes signify that Insureds need to be wary of repairs recommended by contractors. While an AOB clause may lead an Insured to believe that the work done by the contractor will be a matter for the contractor and the Insurer to resolve, if the Insurer does not agree on scope, repairs done in excess will be the responsibility of the Insured. Consequently, Insureds must be very careful not to be swindled into leaving claimed damages for the Insurer to determine without supervision. For this reason, it is advisable to engage an insurance professional to effectively manage the claim process to ensure that the Insured's rights and recovery are not prejudiced.

HOW IT PAYS WHEN THE INSURANCE COMPANY DELAYS

ALLISON FREIDIN, VICE PRESIDENT, GLOBALPRO

Despite the fact that we are approaching the two-year anniversary of Hurricane Irma, several Insurance companies maintain that they are still in the process of "investigating" these claims. Florida Statute §627.70131(5)(a) sets forth that Insurance Companies must pay or deny a claim within 90 days of the claim being reported. If they do not pay money owed within 90 days, the Insured is entitled to interest as long as (1) the policy covers a residence of any size or a commercial space less than 10,000 square feet, and (2) there are no factors beyond the control of the Insurer that are prohibiting payment. Even if there are factors that exist that are beyond the Insurance Company's control, the Insurer is required to pay the proceeds of the insurance money owed to policyholder within 15 days after those circumstances cease to exist. Interest is calculated from the time the claim is reported. Insurance Companies routinely attempt to protect themselves from having to pay interest by alleging that there were existing circumstances beyond their control which prevented a coverage determination. The team at GlobalPro prides itself on properly vetting these excuses and making sure our clients are always in compliance with the conditions set forth in the policy. Therefore, in the case of Hurricane Irma claims, some policy holders may be entitled to almost two years' worth of interest on their claims. Remembering that you have a statutory right to this interest is an important factor in deciding on whether to accept a settlement offer from your carrier.

In the event that a carrier refuses to abide by the interest law or any of the provisions within the policy, the policyholder has a right to sue the carrier. Under Florida Statute §627.428(1), the carrier will be forced to pay for the policyholder's attorney's fees if the policyholder prevails. This puts the policyholder in a very advantageous position as the statute does not award attorney's fees to the carrier if the carrier prevails. Therefore, by delaying payment of a claim, the carrier exposes itself not only to the possibility of paying interest but also a statutory requirement to pay its insured's lawyer.

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