

Florida Appellate Court Rules That Insurer Cannot Assert Defense Based On Insured's Failure To Comply With Conditions Precedent After Blanket Coverage Denial

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A Florida appellate court ruled that an insurer that denies coverage based on its determination that there is no covered loss cannot later assert that the insured failed to comply with the policy's conditions precedent. *Castro v. Homeowners Choice Prop. & Cas. Ins. Co.*, 2017 WL 3614102 (Ct. App. Fla. 2d Dist. Aug. 23, 2017).

Homeowners sought coverage for damage that appeared to be sinkhole-related. The property insurer retained an engineering firm to investigate the claim and subsequently denied coverage based on an earth movement exclusion. Prior to the denial, the insurer did not request examinations under oath ("EUO"), proof of loss or other documentation relating to the damage. Four years later, the homeowners asked the insurer to reconsider its denial based on an engineering report which found that the damage was caused by sinkhole activity. In response, the insurer requested EUOs and sworn proof of loss. After several unsuccessful attempts to schedule the EUOs, the homeowners brought suit. The insurer moved for summary judgment based on the homeowners' refusal to comply with its demands for EUOs and proof of loss. A Florida trial court granted the insurer's motion, finding that the claim had been "reopened" by the new information and that the insurer was entitled to seek compliance with the policy's conditions precedent. The appellate court reversed.

The court ruled that where, as here, an insurer investigates a claim and denies coverage based on a determination that no covered loss has occurred, it cannot later assert the insured's failure to comply with conditions precedent as a basis for summary judgment. The court rejected the insurer's assertion that the subsequent submission of an engineering report constituted a reopening of the claim "that somehow nullified its previous denial of coverage."

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