

Court Decisions Address Insurance Coverage and Claims Handling



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Hurricane Wilma may seem like a distant memory, but not to the state and federal Judges serving Florida's courts. Case decisions issued as recently as the past few weeks may significantly impact your insurance coverage under existing policies.

Several cases remind us of the harsh consequences that can result from missteps in the claims handling process. *So, what do you know about insurance policies and presenting your claim?*



Coverage Provided by the Association

Section 718.111(11), Florida Statutes contains specific coverage requirements. It imposes an obligation upon the unit-owner controlled association to use best efforts to obtain and maintain adequate property insurance. The statute says it is designed to "ensure consistency in the provision of insurance coverage to condominiums and their unit owners". Every condominium association is expected to comply with the statute, regardless of the coverage specified in, or the date of, the declaration of condominium.

With that in mind you may expect the state-run insurance company, Citizens Property Insurance Corporation, to include coverage for the statutorily required property and improvements as specified in the Condominium Act. Not so, said the Fourth District Court of Appeal in a ruling issued on April 10, 2013¹. After an appraisal, the River Manor Condominium Association expected insurance proceeds to repair what the adjusters calculated as \$1,253,278.84 in damages to exterior common elements. Citizens claimed its policy did not include coverage for landscaping or structures not considered part of the residential building - items like carports, swimming pools, cabanas, walkways, ramps and patios were not covered. The Court agreed with Citizens. It found the Condominium Act regulated condominiums, not insurance companies, so the coverage requirements weren't automatically incorporated into the policy so the association could not collect insurance proceeds to repair those exterior items.

Your Participation is Required

As volunteer leaders you are certainly entitled to rely upon the advice and assistance of professionals. However, your participation in the claims handling is crucial. When the Garden-Aire Village South Condominium Association turned its claim over to an attorney and public adjuster, the Board probably thought its troubles were over.

After the storm the Board of Directors filed its claim with QBE for damages to the roof and other portions of the property. It didn't appear that the damages exceeded the deductible, so the Association dropped the claim. However, roof problems continued and the association decided it must replace the roof in late 2009. In 2010 the association agreed to hire

¹ The decision is not final and subject to revision upon rehearing.

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5. **SECURE THE PREMISES** - Make preparations for routine lockdown of the building or other facilities as a storm approaches, so the building is secure during the storm and safe from vandalism or looting if a hurricane strikes;
6. **LIST OF OWNERS & EMPLOYEES** - Have on hand a current, hard-copy reference list complete with the names of all property owners, emergency contact numbers and details of second residence addresses, as well as a list of all association employees, with full contact details;
7. **PHOTOGRAPH OR VIDEO PREMISES** - Keep a visual record through video or photographs of premises, facilities and buildings to facilitate damage assessment and speed damage claims in a storm aftermath;
8. **BUILDING AND FACILITIES PLANS** - Make sure a complete set of building or community plans are readily available for consultation by first-responders, utilities workers and insurance adjusters following a storm;
9. **INSURANCE POLICIES & AGENT DETAILS** - Be sure all insurance policies are current and coverage is adequate for community property, facilities and common areas and compliant with State Law; full contact details for insurance companies and agents should be readily available in the event of a storm;
10. **BANK ACCOUNT DETAILS & SIGNATORIES** - Keep handy a list of all bank account numbers, branch locations and authorized association signatories, and make contingency plans for back-up signatories in case evacuation or relocation becomes necessary;
11. **MITIGATION OF DAMAGES** - In the immediate aftermath of a storm, take the necessary steps to mitigate damages -- this includes "Drying- In," which is the placement of tarps on openings in the roof and plywood over blown out doors and windows, and " Drying -Out," which is the removal of wet carpet and drywall to prevent the growth of mold; and,
12. **DEBRIS REMOVAL** - Have a plan for speedy removal of debris by maintenance staff, outside contractors or civic public works employees, should a hurricane topple trees and leave debris in its wake.



Read that Insurance Policy !!!

Your insurance policy should be on your "must read" list, yet few people take the time to read through it. It is important to read both the association's master policy as well as your own individual policy. Understanding the insurance coverages will help you identify gaps that may need to be filled and alert you to the need to update your coverage as your situation and exposure to risk change. Make it a point to have your insurance professional (agent or advisor) attend a board meeting at some point during the year to answer questions posed by the board members and unit owners. The last thing you want to worry about when a storm strikes is your insurance - making the right coverage decisions and understanding the claims process will enable the association to protect the property and rebuild in a timely fashion.

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a public adjuster and attorney to pursue an insurance claim for Wilma damages. They filed suit and demanded appraisal in October, ostensibly trying to "beat the clock" on the statute of limitations. QBE objected to an appraisal and further objected to the re-submitted claim. The case went to trial in December, 2012.

The Court rejected the claim, finding the association willfully disregarded its obligations under the policy. What did the association do wrong?

- It submitted a proof of loss form requesting insurance proceeds for items not damaged by Hurricane Wilma. The proof of loss said all the windows needed to be replaced when an inspection only revealed 19 broken window panes. It also included pre-existing non-Wilma damages.
- The association did not provide the carrier with an itemized inventory of damages.
- The association produced a witness for the examination under oath who was not familiar with the damages or the repairs made. The witness (a board member) did not prepare for the interview, had "no idea" what actions were taken by the board after the storm, was not capable of describing the repairs made by the association and did not review or know about any association records reflecting Wilma damages.

While the Court did not say the conduct of the association went far enough to be considered fraud, the deficiencies and lack of cooperation precluded appraisal.

The "take away" here is that you need to be involved in your own claim. Whoever is going to serve as a witness for an Examination Under Oath or deposition or trial needs to review all the documentation associated with the loss and have the ability to answer questions regarding the damages, the association's efforts to mitigate damages, the repairs and costs sustained as a result. Just remember that the Board of Directors acts as the "owner" of the property for the purpose of the insurance claim and keep that in mind when board members relocate/change during the time it takes to pursue the claim.

Worth Repeating - Compliance with Policy Conditions Required

A 2012 ruling provides another opportunity to remind community leaders (and CAMS) of the distinction between insurance proceeds for the actual cash value of the lost or damaged property and insurance funds to repair or replace the damaged property (ACV v. RCV). In a recent case the Aspen Specialty Insurance Company policy issued to the Oriole Gardens Condominium Association said:

We will not pay on a replacement cost basis for any loss or damage:

- (1) Until the loss or damaged property is actually repaired or replaced; or
- (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

Remember when the Buckley Towers Condominium Association claimed it was impossible to rebuild the condominium without all of the insurance proceeds up front because the financial burden was too much of an obstacle to overcome? A clear and unambiguous insurance contract will be enforced according to its terms. Unfortunately this association was not entitled to the millions of dollars it claimed it needed to repair or replace the damaged property, it was only entitled to the actual cash value of the damaged property. The Court likewise ruled in favor of the insurance company with respect to claims for Loss & Ordinance Coverage (increased costs of construction to comply with current codes or ordinances). The Aspen policy said the insured must repair or replace the damaged property within two (2) years of the loss before it would pay insurance proceeds for the increased cost of construction.

Community leaders are encouraged to review coverage now that hurricane season has arrived.



Webinar with Representative Moraitis Reveals Insight into Legislative Process

We want to thank all those who participated in our webinar on May 16th.

This was the first time we invited key community advocates to observe the process. Representatives from the Broward Coalition, Alliance of Delray, Coalition of West Boynton Residential Associations, Beaches Coalition, Executive Managers Association, Ritz Carlton Residences, Southeast Chapter of Community Associations Institute and others were invited to meet Representative Moraitis before we began the live Webinar.

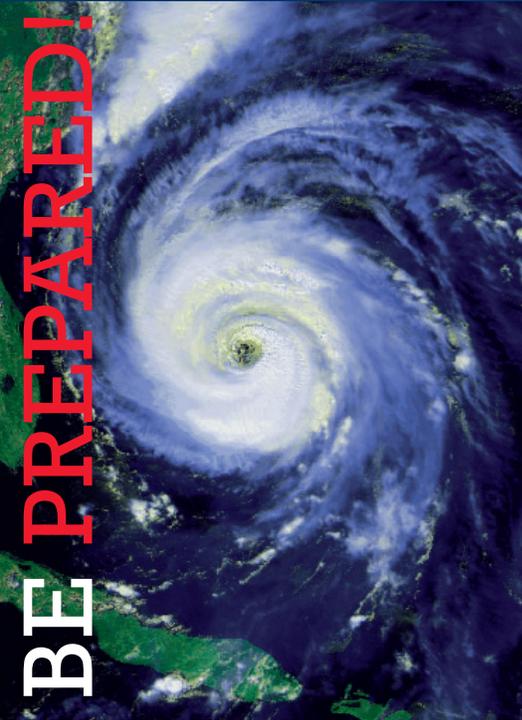
CALL Executive Director Yeline Goin explained how the new laws will impact community association operations.

We especially thank Rep. Moraitis who was truly engaged in the discussion of the bills and issues important to community leaders and who offered insight as to the legislative process from his perspective.

The Webinar was recorded for on-demand viewing. We will post a link on the Firm's website and on the blog as soon as it is available.

IMPENDING HURRICANE SEASON SHOULD SERVE AS REMINDER TO COMMUNITY LEADERS

BE PREPARED!



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HURRICANE SEASON HAS ARRIVED. It began on June 1, and lasts until Nov. 30, with the peak of the season from mid-August to late October. Many have already issued predictions for the 2013 hurricane season, some announcements indicating that four "major hurricanes" are likely but other analysts say the United States can expect up to 19 hurricanes this year.

With that in mind we remind community leaders and CAMs of useful tips. Becker & Poliakoff's 12-point Hurricane Preparedness Checklist should serve as a guideline for those who need to prepare their communities for the upcoming hurricane season:

1. **DISASTER PLAN** - Do a risk analysis of potential consequences of a storm and develop a complete disaster plan, designating a responsible community member as Disaster Plan Coordinator and another as Information Facilitator to field queries and respond to from community members;
2. **EVACUATION ROUTES** - Establish clear building or community evacuation routes and be sure that all community members are provided with copies or printouts and that routes are clearly marked as storms approach; conduct building or community evacuation drills in the weeks leading up to hurricane season;
3. **EMERGENCY GENERATORS & SUPPLIES** - Be sure emergency generators are in working order and have adequate fuel supplies, stock a building or community emergency supplies storeroom with flashlights, batteries, water and other necessities for residents and employees in the aftermath of a tropical storm;
4. **BACKUP COMPUTER FILES** - Be sure that computer files crucial to running the building and association are backed up to CDs or Portable Storage Devices and keep a list of office computer hardware and software vendors and repairmen in case computers crash or systems fail;

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