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Failure to Serve Insured with Demand for Proof of Loss Voids Policy Condition

The Appellate Division, Third Department recently considered an action in which the insurance company served a demand for proof of loss upon the insured's attorney, and the insured failed to comply with the demand. *Adamowicz v. North County Insurance Company*, A.D.3d (December 3, 2009).

The insured sustained a fire loss to her home. All of her claims were settled with the exception of her claim for additional living expenses. As a result, the insurance company served a demand for a sworn proof of loss upon the insured's attorney. No proof of loss was submitted within the required 60 days and the insurer disclaimed coverage.

Plaintiff brought suit and defendant moved for summary judgment dismissing the complaint, based upon the plaintiff's failure to comply with the policy's provisions relating to filing of proof of loss.

The lower court granted defendant's motion for summary judgment, and the plaintiff appealed. The Appellate Division reversed.

The Appellate Division found merit in the plaintiff's argument pertaining to the requirements of Insurance Law §3407(a):

[B]y sending the demand for sworn proof of loss to her attorney and not to her, defendant failed to comply with the requirements of Insurance Law § 3407(a). That statute precludes the denial of an insured's claim for lack of proof of loss unless the insurer first 'give[s] to such insured a written notice that it . . . desire[s] proof of loss to be furnished by such insured.' By requiring the insurer to alert the insured to this duty, 'the Legislature sought to protect the insured from the consequences of . . . oversight or neglect from complying with one of the conditions precedent to a recovery under the policy' ***.

The Court noted that service of the demand upon the attorney alone could have been effective if the plaintiff had, in fact, received the demand from her attorney, however that did not occur in this instance. As a result, the Court concluded that the insurer had not given the notice to the insured required by Insurance Law, § 3407(a) and its motion for summary judgment was correctly denied.

This case demonstrates the critical importance of sending the demand for proof of loss to the insured and not solely to a representative, such as an attorney or public adjuster. ■

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