

Policyholders Need to Preserve Their Insurance Claims Against Suit Limitation Traps

By Joshua Gold

This season's storms and hurricanes unleashed unprecedented carnage on numerous communities throughout the summer and fall. In addition to the absolutely tragic human toll, commercial and individual insurance claims are at heightened levels due to the catastrophic damage to cities, towns and rural areas (whether coastal or inland).

The good news is that many affected policyholders have insurance and governmental support to assist with efforts to rebuild homes, businesses and neighborhoods. The bad news is that insurance policy fine print can greatly impede recoveries. A case in point is the recent Fifth Circuit court decision in which the appellate court ruled against a policyholder's hurricane damage claim because it was found to be time-barred under the "the one-year limit for claims under the Standard Flood Insurance Policy" (*Mt. Pleasant Properties LLC v. Wright National Flood Insurance Co.*, case number 24-60170). In the abstract, one year may seem like a long time to get an insurance claim submitted and paid. The reality, however, is that for many policyholders the claims process is a long, protracted system of repeated insurance company requests for information, amendments to proof of loss forms, claim negotiations, and insurance company delays in funding insurance claims in full.

Don't Let This Happen To You

Almost all insurance policies providing protection for first-party property damage include a contractually-shortened statute of limitations—often times shortened to one or two years. Thus, if the normal statute of limitations applicable to an insurance dispute would be 3, 4, 5 or even 6 years (like New York), these insurance policy suit limitation clauses purport to drastically slice that time period down. Accordingly, a policyholder may not have even close to all the time it needs to file suit should a claim dispute arise or claim payments remain outstanding as a deadline nears.

Whether dealing with named-peril or all risk property insurance, time-element coverage, flood insurance, crime insurance, marine insurance, or even some

cyber insurance policies, it is fairly common to see suit limitation clauses contained in these insurance products. These clauses are deliberately designed to depart from, and shorten, an otherwise applicable statute of limitation period for breach of an insurance company's promise to provide insurance coverage.

Some states will not enforce suit limitation clauses that are deemed too short because they provide less protection than mandated under the state's insurance code. Yet other courts will reject application of suit limitation clauses to bar coverage where the insurance company has acted in bad faith or has otherwise misled the policyholder about its intentions on paying covered claims.

Nevertheless, policyholders should not gamble on whether a particular state or court will strike down an insurance company's effort to forfeit coverage on the basis a suit limitation clause. Often, it is not set in stone as to which state's law will apply to a given insurance claim in the first place—especially in the context of commercial insurance claims that often lack clear choice of law insurance policy provisions and where numerous state interests may be implicated. Additionally, some courts are reluctant to find an insurance company in bad faith, even where the claims handling conduct is dubious, at best.

Sent Proceed Cautiously and Plan Ahead—Even Where No Claim Denial Is

Policyholders are wise to err on the side of caution and assume that a suit limitation clause can successfully be exploited to contest recoveries for even for the most clearly covered of insurance claims. Even when the insurance company has not yet denied coverage or when the total loss information is not yet available, have a plan to deal with suit limitation clauses as the deadline nears and the claim remains unpaid in full.

Policyholders dealing with a looming suit limitation deadline can either file suit or seek to get a written tolling agreement in place that buys additional time to file suit if the claim is ultimately disputed or if claimed amounts remain outstanding. Most insurance companies will agree to toll a suit limitation clause (as well as other time-sensitive defenses to coverage). Remember that these agreements must be in writing and have the full force and effect of a binding legal agreement. Remember too that it is best to seek such tolling agreements well in

advance of a deadline as most insurance companies will take weeks if not longer to execute such agreements.

Conclusion

Some insurance claim disputes are easy to identify at the outset and you can map-out your plan well within the suit limitation period—either because of a complete denial of coverage benefits early on or because the insurance company is paying but a fraction of claim—even where policy limits could afford a much higher claim payment.

Some insurance claims are more nuanced. It may be unclear if the insurance company will deny coverage in whole or in part. They may not even make a final coverage determination until just before a suit limitation deadline or, sometimes, after one has already passed. Additionally, where time element (a/k/a “business income” or “business interruption” and its offshoot coverages) claims are at stake, those claims historically take much longer to resolve—whether justified or not.

As such, prudent policyholders will calendar suit limitation dates conservatively and have a plan of action ready before any time-sensitive deadline hits.