

Partial Compliance with EUO Requirement MIGHT Preserve Legal Claim by Insured



When a policyholder is involved in an insurance dispute with his or her insurance company following a loss, the insurance company often will request that the insured submit to an examination under oath (EUO). The EUO allows the insurance company to obtain a sworn statement under oath so the information can be used in evaluating coverage as well as the nature and amount of any loss. Florida courts have held that participation in an EUO indicated under a policy is a "condition precedent" to payment of a claim. However, a recent decision by the Fourth District Court of Appeals, *Solano vs. State Farm*, suggest that partial compliance with this condition precedent might be sufficient to justify payment of a policyholder's claim.



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The policyholders, Dr. and Mrs. Solano, suffered damage to their home during a hurricane. Like other homeowner's policies, the Solano's policy imposed certain conditions prior to a claim being paid, which included appearing at an examination under oath (EUO), submitting a sworn proof of loss and allowing an inspection of the property. The Solanos hired a public adjuster who submitted a claim for over \$200,000 in losses. The public adjuster and a representative of State Farm conducted an inspection of the property. The public adjuster also submitted several additional sworn proofs of loss that increased the amount of the indicated loss. State Farm requested that the Solanos submit to a EUO and also asked that the public adjuster submit to an EUO if his knowledge and opinions would be relied on by the Solanos.

Dr. Solano participated in the EUO and submitted a fourth sworn proof of loss. He deferred almost entirely to the adjuster regarding the extent, cause, and amount of loss while deferring to his wife on certain

other questions. With respect to his personal observations after the hurricane, he disclosed the damage he personally observed following the hurricane as well as the progress with regard to repairs. Dr. Solano declined to allow his wife to participate in an EUO after his wife was completed because he felt the second EUO in the same day would expose Mrs. Solano to excessive stress. While the adjuster also refused to participate in an EUO, he indicated he might be willing to do so in the future. The adjuster contended that State Farm could not compel his participation.

State Farm claimed it was deprived of the opportunity to conduct a meaningful EUO. The insurer also claimed that the Solanos' sworn proof of losses were deficient. The Solanos produced a fifth sworn proof of loss along with supporting documentation. The insurance company conceded that the final proof of loss and supporting documentation were acceptable. The parties arranged a scheduled EUO for Mrs. Solano, but State Farm canceled the EUO because the Solanos had filed a lawsuit to compel an appraisal.

State Farm argued that the Solanos failed to provide a "full, complete and meaningful EUO" and to provide all of the requested documents. The insurer contended that it was entitled to summary judgment because the policyholders had failed to satisfy a

"condition precedent" to having the claim paid. The trial court agreed and granted summary judgment for State Farm.

On appeal, the court agreed that participation in an EUO as indicated in an insurance policy is a condition precedent to recovery. However, the court distinguished this case from earlier cases in which the insurer did not provide any documents and completely failed to submit to the EUO process. The court noted that Dr. Solano had appeared at the EUO and answered some questions; Mrs. Solano had agreed to appear; the public adjuster provided a written affidavit in lieu of appearing; and the Solanos submitted a significant amount of documentation. While the adjuster did not appear, Dr. Solano had arranged for the public adjuster to participate in the EUO. Further, the court pointed out that there was no evidence that Dr. Solano had the ability to compel the adjuster's participation after the adjuster declined to submit to a sworn statement. Because the Solanos satisfied the condition precedent of submitting to an EUO to a significant degree, the court ruled that the issue of whether the compliance was adequate to satisfy the condition was a question of fact for the jury.

When it comes to participating in an EUO, submitting a proof of loss, providing requested supporting documentation and satisfying other conditions precedent under a homeowner policy, compliance can have a substantial impact on an insured's right to recovery.

Don't quit on your insurance claim just because your insurance company quit on you!

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