

PROTECTION OF POLICYHOLDERS FROM THE INAPPROPRIATE ABUSE OF EUO PROVISIONS

When policyholders file claims, their insurance policy generally will provide the insurer with the right to require its insured to participate in an examination under oath (EUO) or a compulsory medical examination (CME) in cases involving other types of claims. Insurance companies have a history of using these tools to trap unwary policyholders and avoid paying claims. Florida homeowner's policies generally contain policy language that makes compliance with a EUO request mandatory prior to filing a lawsuit for failing to pay a homeowners claim.

Participation in an EUO, which also usually involves the production of documents, is a condition precedent to filing a lawsuit for breach of the insurance contract. However, Florida courts have recently protected policyholders from carriers who attempt to use these investigation tools as a sword rather than a shield. The Florida Fifth District Court of Appeal has ruled that participation in a CME (or EUO) may be a condition precedent to filing a lawsuit for breach of contract, but failure to comply with the condition does not bar the insured's right to file a lawsuit unless the insurer can demonstrate prejudice.



Attorney J.P. Gonzalez-Sirgo is a former insurance claims adjuster and before launching his law practice in 1994 worked for a prominent insurance defense law firm in Miami. Since 1994, he has focused his practice on protecting the rights of insurance policyholders, personal injury, and wrongful death victims and fighting for the rights of Florida consumers and small businesses. J.P. holds an "AV Preeminent" rating from Martindale-Hubbell, the highest rating available to lawyers. The firm has recovered millions of dollars for victims of denied or underpaid insurance claims, victims of catastrophic personal injuries and wrongful death and on behalf of those that have been taken advantage of by Big Business and Big Insurance. J.P. has been certified as a life member of the Million Dollar Advocates Forum and the Multi-Million Dollar Advocates Forum.

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The Florida Fifth District Court of Appeal case of Whistler's Park, Inc. vs. The Florida Insurance Guaranty Association has ruled that non-compliance with an EUO provision does not bar recovery if the insurer was not prejudiced. The Fifth District in both Whistler's and State Farm Mutual Automobile Insurance Company v. Curran discussed the tendency of insurance companies to misuse EUO and CME requests. In Whistler's, the court observed that non-compliance with an EUO request had spurred "a cottage industry of EUO litigation" asserting the failure as a defense to payment. The court also pointed out, "The actual, if unglamorous, true purpose of the EUO – verification of the insured's loss – has been lost in this larger battle. No doubt there can be genuine instances of insurance fraud, but the recent and ever-escalating number of EUO cases that have arisen all over the state appear to be more about strategy than proof." (Emphasis added). The court also noted the potential for abuse in this process was exacerbated because

most homeowners policies permit insurers to demand multiple EUO's and the production of voluminous records even though the insured lacks counsel. The Third District Court in De Leon v. Great American Assurance Co. reached a similar finding that the insurer in that case exploited its contractual right to a EUO by using "unwarranted" and "intrusive" questions that the court found to be improper, irrelevant and impertinent. The insurers also repeatedly threatened the policyholder that refusal to answer a question would void coverage. The court determined that the policyholder was completely justified in refusing to answer such questions.

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HUMAN TRAFFICKING AWARENESS DAY

January 11 is Human Trafficking Awareness Day. Human Trafficking Awareness Day is dedicated to raising awareness of sexual slavery and human trafficking worldwide. It started in 2007, when the U.S. Senate designated January 11th as National Human Trafficking Awareness Day. Although it is a U.S. initiative, the United Nations has begun to highlight this topic and working towards global awareness. Contact the National Human Trafficking Resources Hotline at 888-373-7888 for more information.

MARTIN LUTHER KING DAY

Martin Luther King Day celebrates the life and accomplishment of Dr. Martin Luther King, Jr. MLK promoted Civil Rights through nonviolent civil disobedience. He is perhaps best known for his "I have a dream..." speech in 1963. He was assassinated in 1968. Martin Luther King, Jr. day became a federally recognized holiday in 1983. The first year this holiday was observed was 1986, and not by all states. In 2000 it became a nationally observed holiday in all states. Martin Luther King Jr. Day takes place on the third Monday of January each year. In 2014, Martin Luther King Jr Day has been designated as a Day of Service. Visit thekingcenter.org to find out about local events and ways you can help promote unity, fight racism, and promote justice.



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

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