

Policy Language Aside, Insurer is Obligated to Pay in California

March 25, 2015

A California appellate court found that an insurer's delay in resolving and denying a claim under a commercial property liability insurance policy excused the property owner from satisfying a condition precedent to coverage, namely, repairing the damage at issue in order to recover the replacement cost for the loss. The court also approved of a lost business income award to the insured, despite the insured's failure to conduct any business at the property as the policy required. In *Stephens & Stephens XII v. Fireman's Fund Insurance Co.*, a commercial warehouse was burglarized over a period of time, though coverage was added by Fireman's Fund only days before the theft was discovered. The insured notified Fireman's Fund of the theft, but Fireman's Fund neither accepted nor denied coverage for the loss, concerned the damage was too extensive to have occurred in the brief period of the policy's coverage. Fireman's Fund eventually denied coverage, but not until nearly five years after the incident and barely a month before trial. The jury awarded the insured more than \$2 million for the replacement cost of the damage to the property, though the insured had never repaired the property, and an additional \$2 million in lost business income. The trial court granted the insurer JNOV, finding the insured was required to (a) complete the repairs before it could receive their replacement cost, and (b) conduct business at the property before it could receive a lost business income award. The appellate court disagreed, holding the insured's failure to complete the repairs did not preclude it from obtaining reimbursement for that cost once the condition precedent was satisfied. Though the insured was not entitled to an immediate award for the costs of repairing the damage, it was entitled to "a conditional judgment awarding these costs if the repairs are actually made." The insurer's delay in resolving or denying the claim "materially hinder[ed]" the insured's ability to repair the property and, therefore, such "procedural obstacles to obtaining the replacement cost value should be excused." The appellate court also approved of the jury's award for lost business income, reasoning the award could be properly construed as an award for lost rent under the policy.

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