

Florida Courts Offer Different Opinions on "Policy Conditions"

December 22, 2014

Several recent Florida decisions have addressed the distinction between “conditions precedent” and “conditions subsequent” in insurance policies and the impact of that distinction on issues of prejudice and burden of proof at trial. It is difficult to reconcile the opinions. In *State Farm Mut. Ins. Co. v. Curran*, the Florida Supreme Court noted that a condition precedent is a condition that must be performed before the insurance contract becomes effective. A condition subsequent presupposes the insurer’s obligation under the policy, but provides that the obligation will be negated if the condition is not performed or does not occur. In a suit alleging a policy breach, the policyholder has the burden to plead and prove satisfaction of a condition precedent. However, an insurer has the burden to plead and prove the failure of a condition subsequent, and also to demonstrate prejudice as a result of the failure. In *Curran*, the policyholder was injured by an underinsured motorist. The policyholder settled with the tortfeasor and then demanded that State Farm pay its limits of uninsured motorist coverage. State Farm attempted to schedule a compulsory medical exam (CME) pursuant to the policy terms, but the policyholder refused to attend. State Farm notified the policyholder that her failure to assist and cooperate might result in a denial of coverage. The policyholder sued and was awarded a summary judgment. The Florida Fifth District Court of Appeal affirmed, holding that the policy’s CME clause was a condition subsequent, thereby requiring State Farm to plead and prove prejudice to defeat coverage. The decision was certified to the Florida Supreme Court as a matter of great public importance and affirmed by a divided court. The majority opinion relied on precedent holding that a CME provision is a condition subsequent, the nonoccurrence of which is an affirmative defense. A concurring Justice approved that result, on the rationale that uninsured motorist coverage is statutorily required, and so that insurers are precluded from imposing conditions that are not authorized by Statute and “directly contrary to the statutory purpose of Uninsured Motorist benefits.” Two Justices dissented, because they believed the policy “unambiguously” required a CME as a *condition precedent* that the policyholder had failed to satisfy. The dissent opined that the majority erred by defining a condition precedent as a condition that must be performed before a policy becomes effective, instead of following cases which establish that they are prerequisites only to the right to sue to recover contract benefits. According to the dissent, the policy’s CME obligation was an unambiguous condition precedent to the policyholder’s right to sue for benefits. Therefore, an insurer need not show that the failure of the condition caused

it to suffer prejudice. Several months after *Curran*, the Florida Fourth District Court of Appeal reached a different result, when a policyholder sued State Farm for failing to pay her property damage claim and suffered an adverse summary judgment. In *Rodrigo v. State Farm Inc. Co.*, the policyholder failed to submit a sworn proof of loss, which the policy required as a condition precedent to relief. The Fourth District Court affirmed the summary judgment in favor of State Farm and distinguished *Curran*, on the ground that the *Curran* rationale was limited to “the unique subject of uninsured motorist coverage and compulsory medical exams.” The court noted that the policy specifically provided that the insured had an affirmative duty to provide a sworn proof of loss, “unlike a CME, which is requested by the insurer to substantiate a claim already made by the insured.” In *Solano v. State Farm Florida Ins. Co.*, decided several months after *Rodrigo*, the Fourth District again appears to have departed from *Curran*, although the facts are almost identical. The Solanos sued State Farm for failing to pay their claim for property damage caused by Hurricane Wilma. Following the storm, the Solanos submitted several sworn proofs of loss, each increasing the claim for damage. State Farm requested that they submit to Examinations Under Oath (EUO), as required by the policy as a condition precedent to recovery. Dr. Solano appeared for the EUO and answered questions, but he deferred to his adjuster and his wife regarding the type, extent and cost of the damages. Dr. Solano refused to have his wife submit to the EUO, and the adjuster also refused. State Farm then rescheduled Mrs. Solano’s EUO, but the Solanos sued before it occurred. The trial court granted summary judgment for State Farm, because Dr. Solano’s failure to provide a meaningful EUO was a failure of a condition precedent to recovery. On appeal, the Fourth District reversed. Although a refusal to provide an EUO was a breach of a condition precedent, precluding recovery under the policy, the court found that there was a factual dispute regarding over whether the Solanos had totally failed to comply. Thus, there was a question of fact as to whether there was *sufficient compliance* with the policy’s condition precedent. The court declined to address *Curran*, because, “While the issue addressed in *Curran* is similar to the issue addressed here, the Court’s analysis hinges on matters which are not present in this case.” As a result of these decisions, it is difficult to determine whether a policyholder’s failure to comply with a policy condition is a failure of a condition precedent, which defeats coverage, or a failure of a condition subsequent, which shifts the burden to the insurer to prove that the policyholder breached the policy and caused prejudice to the insurer. The Florida Supreme Court will have to clarify whether *Curran* is limited to uninsured motorist claims or applies to all policy conditions.

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