CARLTON FIELDS

Appellate Court Rejects “Explosive Corpse” Theory

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So many perils beset Florida condominium owners— hurricanes, mold, floods—that they can be forgiven for overlooking the possibility that the undiscovered body of a deceased neighbor might pose a hazard to adjacent residents. After all, insurers in the Sunshine State do provide coverage for many uncommon risks, including "explosions."

Recently, an insured sought to deploy that provision by offering the affidavit of a physician expert, stating that decomposition had caused a neighbor’s corpse to "explosively expand" and, ultimately, cause damage to the insured’s home. In *Rodrigo v. State Farm Florida Ins. Co.* , a Florida appellate court found the expert’s account inconsistent with the "plain meaning of the term explosion," and it affirmed a summary judgment award for State Farm.

The insurer denied the plaintiff’s claim on two grounds: both lack of coverage specifically addressing the hazard in question and failure to provide a sworn proof of loss. The insured claimed State Farm waived the latter ground by adjusting the claim and offering to pay an appraised amount. The trial court held that, under Florida law, adjusting a loss and negotiating a settlement do not waive the insurer’s right to deny a claim. The appellate court agreed, finding that proof of loss is a condition precedent to coverage, that failure of a condition creates a presumption of prejudice under Florida law, and that the insured had failed to proffer sufficient evidence to overcome the presumption.

Even if the insured had provided a sworn proof of loss, however, the court found that her claim would still be barred, because her policy limited personal property coverage to losses caused by named perils. It was to invoke this coverage that plaintiff offered the unwelcome details concerning her neighbor’s "advanced decomposition." The court, however, was not persuaded that the gruesome details of this process were "tantamount to an explosion" within the plain meaning of that term.