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August 2006

ALERT

Hurricane Katrina's One Year Anniversary: Make Sure Time Is On Your Side

By John N. Ellison, Joshua Gold and Finley T. Harckham

The last week of August will mark the one-year anniversary that Hurricane Katrina devastated life, property and business in the Gulf Coast region. Many affected policyholders, busy rebuilding and repairing their businesses, have been forced to simultaneously deal with their insurance companies in an effort to secure the full benefits of their insurance protection. Because many businesses' insurance claims for hurricane damage still are pending and have not been resolved, policyholders must ensure that they do not overlook time-sensitive provisions contained within their insurance policies or under Louisiana law, including those which address the policyholder's right to sue its insurance company for a denial of coverage. These issues also apply to deadlines for Hurricane Rita.

Many policyholders do not know that certain types of insurance policies contain clauses known as "suit limitation" provisions. Suit limitation provisions found in virtually all forms of commercial property and homeowners insurance are used by insurance companies to shorten the statute of limitations for insurance claims in an effort to insulate themselves from policyholder suits when insurance coverage is denied—importantly, even in instances where there is no reasonable basis to deny the insurance claim. Louisiana law specifically allows such a limitation. Under LSA-R.5.22:691, insurance companies are expressly authorized to impose a 12-month limit to make a claim after the inception of a loss under a property or homeowners insurance policy.

For example, some property insurance policies contain clauses similar to the following "suit against the company" provision:

No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless the legal action is started within 12 months after inception of the loss.

Even those insurance policies which appear to contain a longer suit limitation period, such as two years, must be carefully examined. Some insurance policies with a suit limitation period of two or more years may still seek to incorporate a shorter limitation period in situations where a state's standard fire insurance policy allows for a shorter suit limitation period. While there may be a host of arguments that a policyholder can make to avoid the forfeiture of coverage that insurance companies seek under these suit limitation provisions, policyholders, nevertheless, are advised to treat these clauses very seriously and plan accordingly.

For any insurance claim stemming from last season's hurricanes, suit limitation clauses must be reviewed and addressed promptly given the looming deadline for some policyholders. Since many suit limitation clauses call for a suit period as short as 12 months, many insurance compa-

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Anderson Kill has two non-legal subsidiaries which assist policyholders, Anderson Kill Loss Advisors (AKLA) and Anderson Kill Insurance Services (AKIS). AKLA assists policyholders with the quantification and presentation of property and business interruption claims. AKIS provides risk management services to its clients. For more information about AKLA and AKIS, please visit their respective web sites at:

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nies will begin to argue that policyholders cannot compel them to pay insurance claims after this August, even in cases where the insurance company itself has wrongfully delayed the claims adjustment process or has no legitimate reason to avoid coverage.

Louisiana Insurance Department Intervenes

The Louisiana Insurance Department issued Directive 199 on July 11, 2006, that requires the mandatory extension of the 12-month limitation period for all claims from Hurricanes Katrina and Wilma to a 24-month period. As a result, all property and casualty insurance companies, both "direct" and surplus lines, were directed to file with the department a stipulation agreeing to this extension. While most major insurance companies have followed the department's directive, it is imperative that policyholders confirm that their specific insurance company is on the compliance list. While this extension remains in place for now, certain insurance companies are challenging the constitutionality of this directive in the Louisiana Supreme Court, a ruling on that challenge is expected to be rendered sometime soon.

Other Available Options to Louisiana Policyholders

If a policyholder finds itself coming up on the deadline to file suit for an insurance company's refusal to provide coverage, a couple of options are available. One option is to seek an extension of the suit limitation period. Such an extension should always be in writing and should expressly indicate the length of time for which the extension is being granted. Louisiana law places strict requirements on the form and content of these agreements that must be followed. Typical tolling agreements will not suffice. To extend the time period for commencing a claim, the policyholder must get the insurance company to execute an acknowledgement of right, which says that coverage exists, but a dispute as to amount remains.

Second, policyholders can file suit and then move to stay the proceedings if further negotiations can resolve the insurance claim. Similarly, if the writing on the wall indicates that the insurance company is not going to honor the insurance claim no matter what, then a policyholder should not let the matter linger and, instead, consider filing suit before the limitation period closes so as not to jeopardize its insurance coverage rights.

At a very minimum, policyholders of all kinds, including corporations, individuals, small businesses and governmental agencies, should carefully review their insurance policies, and make sure to correctly calendar the date by which their insurance policies call for suit to be commenced. To miss this date could jeopardize even a well supported and valid insurance claim. ▲

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