California Court Rejects Declination Regardless of Insured's Breach of Proof of Loss and Notice Requirements

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Once again, insurers are reminded that California courts may not enforce clear and plain language in their contracts. While California courts frequently recognize that insurance policies are contracts, they also frequently "pick and choose" which rules of contractual interpretation and construction will apply to them. The recent decision in *Henderson v. Farmers Group, Inc.*, ___ Cal. App. 4th ___ (Oct. 24, 2012) is a prime example of that.

Invoking California's strong public policy against what it characterized as a "technical forfeiture," the Court of Appeal has refused to enforce policy provisions which required an insured to submit a sworn Proof of Loss to support a property damage claim. The Court expanded the reach of the "notice-prejudice rule" and reversed summary judgment in favor of the insurers, holding that unless their investigation of the claim was prejudiced by the failure to submit a POL, the breach of the policy condition would not bar coverage.

The Court was dismissive of Farmers' argument that the judicially-created notice-prejudice rule could not trump the statutory provisions of the California Insurance Code (which include a requirement for sworn proofs of loss), saying that "the notice-prejudice rule avoids an absurd result that would follow were courts to require absolute compliance with the proof of loss condition."

The case before the Court involved a number of homeowners who contended that their homes were damaged by soot and particulates from wildfires in Southern California. Farmers apparently presented evidence of actual and substantial prejudice only with respect to one of the homes, where remodeling had been done before it received notice of the claim. Even as to that home, though, the Court of Appeal refused to uphold the summary judgment ruling, finding that Farmers' failure to mention late notice in its declination letter had waived the defense.

According to the Court's opinion, Farmers sent a hygienist to the property and, "finding insufficient levels of ash, soot, and char, denied remediation under the policy." Farmers never sent a preliminary reservation of rights letter based on the late notice, and the court held that a general reservation of rights included in its denial letter was insufficient to preserve this defense in the face of California Insurance Code § 554, which says that "delay in the presentation to an insurer of notice or proof of loss is waived…if he omits to make objection promptly *and specifically* upon that ground." (Emphasis added.)

One cannot help but suspect that this is a case where "bad facts" have made "bad law." And, one cannot help but also suspect that the Court's antipathy for Farmers' position may have been influenced by the plaintiffs' "bad faith" claim, which apparently included evidence that the company "required a proof of loss only when its investigation concluded that the insured had a valid claim." Viewing that evidence in the light most favorable to plaintiffs, as the losing parties on the motion for summary judgment, it noted that "a jury could conclude that FIE acted unreasonably and used the failure to provide timely notice or proof of loss not because it believed these were required under California law, but as a shield to deny meritorious claims."