Ep. 11: Insurers Take Note: New Changes to Florida Law Mean Changes in Claims Handling & Roof Repairs in the Sunshine State

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Host: Welcome to RumbergerKirk's Legally Qualified podcast, where we answer important questions facing businesses today and discuss hot topics in the legal industry, from employment law to commercial litigation, product liability, and everything in between. We've got it covered.

Robert Barton: Hello everyone. Thank you for joining us today for this episode of Legally Qualified. Today we'll be discussing changes to Florida law and their impact on claims handling in the Sunshine State. I'm Robert Barton, attorney at RumbergerKirk's Tampa office. In my practice I represent insurance companies in coverage disputes and bad faith claims in both state and federal courts.

Allan Rotlewicz: And I'm Allan Rotlewicz, a partner in RumbergerKirk's Tampa office. I focus my practice on first-party insurance litigation in transactional matters, as well as bad faith and casualty litigation. I spent more than a decade representing insurance companies in coverage disputes and spent four years as general counsel for Anchor Insurance Company, a Southeast United States property and casualty carrier.

Robert Barton: Today we're going to be talking specifically about changes to two different Florida statutes and what those changes mean moving forward. We'll talk about changes to what we're calling the claims handling statute under Florida Statute 627.70131. We'll also be talking about changes to the 25% rule in regards to roof repairs under the Florida Building Code and how those changes impact insurance companies. Let's start with changes to claims handling procedures in Florida. Allan, why don't you start with a summary of the old requirements for claims handling statutes?

Allan Rotlewicz: Sure Robert. Field statute has little specificity as to what had to happen. Primarily there was a 90 day deadline for the claim to be adjusted. But there was not much more. The statute was not specific about what had to happen during those 90 days, how the home inspection had to be completed and what information was provided to the insured. The new amendments have significantly more specificity and transparency as to what's expected of the carriers and what should be done within those 90 days.

Robert Barton: And I know we'll get into the specificity a little bit later and what's expected in just a moment. But let's talk about the 25% rule next. Can you explain to us, what is the 25% rule?

Allan Rotlewicz: Sure, so currently up until January 1st of 2023, if more than 25% of a roof is damaged in an insurance claim, the insurance carrier is going to have to pay for a complete roof replacement, which means you can't repair just the sections that were damaged. But you're going to pay for an entire roof replacement, even where a majority, sometimes as much as 75% of that roof, isn't damaged.

Robert Barton: Now that we have a picture of what the old statutes kind of lay out and what they require, let's talk about some of the biggest changes that have occurred. Allan, let's start first with the claims handling statute. What changes were made there?

Allan Rotlewicz: Sure, so the first change that was made was what has to happen by the insurance carrier after they receive a sworn proof of loss. Under the new statute that goes into effect January 1st of 2023, the carrier has to start investigating the claim within 14 days of receipt of that sworn proof of loss. Additionally, when the field adjuster, an expert goes out to the property to do an inspection, that individual has to provide certain information to the insured, including their name, their employment and their license number.

More importantly though, is that individual prepares an estimate of the damage. The carriers are going to have to produce those estimates to the insured, and if the estimate is adjusted or revised, whether upward or downward, those revisions are going to be provided to the insured with an explanation as to why the estimate was changed.

Robert Barton: So in terms of specificity, timing is really important under these new statutes. What changes were made to the roof replacement, otherwise known as the 25% rule under the Florida Building Code?

Allan Rotlewicz: So importantly, the changes that were made only apply to newer roofs. So the change that was made applies to roofs that were built in compliance with the 2007 Florida Building Code or later. And what the new rule allows, it allows the carrier to make a payment for only that portion of the roof that has to be repaired and not pay for a full roof replacement. As I said, most importantly this only applies to roofs that comply with the 2007 Building Code or later.

Robert Barton: Insurance companies are expected to be in compliance with these changes by January 1 of 2023. The overall goal of these changes is to provide additional transparency to the insured of course in hopes to limit litigation that carriers have been seeing. What do you expect the impact of these amendments to be on carriers though as far as claims handling goes?

Allan Rotlewicz: Obviously as you mentioned, one of the biggest hopes of the insurance carriers is to limit litigation. So what we're hoping to see with these new amendments is more claims handling transparency. A lot more information is going to be given to the insured, and it's not just going to be documents. But truly explanations as to what's happening during the adjustment of the claim. Even if a claim is denied, if an estimate is prepared, the insured is going to have it and understand, okay, based upon the investigation, this is what would have been paid. This is what these repairs are going to be costing. In addition, the statute provides additional specificity as to what should be included in those claim denial letters or those claim payment letters.

Robert Barton: Allan, I want to discuss a few things here, in particular the impacts in reality to these carriers as it relates to the amendments to the claims handling statute. First, the proof of loss provision requires that carriers begin their investigation within 14 days of receipt of a proof of loss. But in practice, carriers usually begin their investigation into the loss as soon as they receive the claim, not necessarily the sworn proof of loss. So I don't foresee much impact to carriers on that front, do you?

Allan Rotlewicz: I think what's most important is the carrier is going to have to explain why they received that sworn proof of loss. So it's not so much that they're going to go out to the property and inspect again. But they're going to provide some kind of an update to the insured within those 14 days beyond what we see now of, we received the sworn proof of loss and we reject it. Hopefully with these changes we see a little bit more of, why did we ask for the sworn proof of loss? What additional information did we as the carrier glean from receiving it? And how are we using that information to reach a claim determination?

Robert Barton: The second thing I wanted to raise here is that the new statute also requires a physical inspection by the carrier, and that inspection must occur within 45 days. But I've had plenty of experience with claims being reported by attorneys or public

adjusters that could not accommodate inspections within 45 days. What do you predict happens then?

Allan Rotlewicz: I think what's going to be most important is communication and providing updated letters to the insured or the representative, if they're not able to do it, then explain why. And if it truly is that you have a public adjuster or an attorney who's not allowing the carrier to complete that investigation, as long as the carrier has documented it, it's going to help them both with the claims handling and with the potential future litigation.

Robert Barton: Now you touched on my third point here a little bit earlier, but the new statute seemingly requires carriers also produce an estimate to the insured within seven days, either after it's created or after the insured requests it. Does this mean that any estimate that is created by the insurance carrier must be produced or just the estimate being paid on, if any?

Allan Rotlewicz: It does mean any estimate, and that is a significant change to what we have now, in that the insured is only going to be provided currently with a copy of the estimate if the claim is paid and the estimate that is being paid upon. Now you have a situation where the insured is going to have all the estimates, but more importantly, the insured is going to have an explanation if that estimate was revised. And the hope is that with that level of transparency, if the insured doesn't understand why the estimate was reduced or increased, they can pick up the phone, call the desk adjuster and have a conversation about why. And hopefully that additional transparency leads to better claims handling, better communication and less litigation.

Robert Barton: Yeah, and you touched on the reasonable explanation there, that's going to be provided by the insurance carriers. But this new statute obviously requires a reasonable explanation in writing to the policy owner for either payment or denial. I

anticipate some potential litigation over what is a reasonable explanation. How can carriers comply with any requirement? It seems somewhat vague.

Allan Rotlewicz: I agree it is vague. I think what's most important is that desk adjustor can put themselves in the shoes of the insured who may be the first time they're ever going through an insurance claim and say, if we've made changes, what would I want to hear as the consumer? And if you have best practices and you have the insured and the Florida consumer as your top goal here, hopefully that detailed estimate is not just a regurgitation of insurance policy language. But an explanation by the desk adjustor of, in reviewing your claim, this is what was determined, and this is how we reached our decision. And hopefully that is compliant with that reasonable explanation and leads to a conversation if necessary between the insured and the desk adjuster as to how the claim was handled and what was done.

Robert Barton: Now of course these new statutes as you mentioned earlier, the goal is to reduce litigation. But as we've discussed, there may be some other areas that have the potential to increase litigation. Can you talk a little bit about those?

Allan Rotlewicz: And some of these we've already talked about. One is obviously the reasonable explanation as to any changes in an estimate. I think the other big one is what we've been talking about with a number of estimates that may be produced to the insured and issues as to what's admissible at trial. Well, obviously the insured may have that information, it may not be admissible. So if these claims do end up in litigation, we anticipate some additional motion practice as to what's admission, what questions can be asked of either the desk adjuster or the corporate representative of the insurance company regarding estimates that were not relied upon to make the claim determination but were produced during the claims handling process.

Robert Barton: What about the 25% rule? What impacts on litigation do you see the changes to the 25% rule moving forward?

Allan Rotlewicz: We're still going to see issues with the matching statute, and that statute primarily says, whether it's shingles or roof tiles. Obviously it also plays a role in interior damage. But talking specifically about roofs, I anticipate that we're going to see creative plaintiff's insured attorneys arguing that even if the 25% rule doesn't apply, the matching statute may apply to some of these claims. And so to continue to have a roof replacement if those shingles or roof tiles cannot be located when they do the repairs.

Robert Barton: Now while we can all hope for a reduction in litigation, what are some of the best practices carriers should be doing to adjust these new requirements? In particular the amendments to the claims handling statute first. What are some of the best practices for carriers moving forward come January 1?

Allan Rotlewicz: So a couple of things that we really think are going to be important. The first is, have detailed claim notes. It's going to be extremely important to detail why you're going to make a change to an estimate, why if you have an estimate you're still denying the claim, because that means the field adjuster potentially found damage. When we're talking about that reasonable explanation, when you send out the first estimate, explain where you are in the claims handling process. Is this a final estimate? Is this a draft estimate? Are there items that you're still waiting on to make a coverage determination?

The more information you give to the insured, the better the claim is going to be handled and hopefully the less likely you are to have litigation. Obviously the other big ticket item is the new deadlines and making sure that you're complying with all these sub-deadlines within the 90 day process to get this done. We think it's going to be extremely important to update your claims handling manual and your best practice guideline. And talk to your third party administrators or independent adjusting firms to figure out what training they're providing their adjusters on these new changes.

The goal of all of this is to be more transparent and provide great customer service. If carriers can provide that great customer service, have conversations with their insureds during the claims handling process, we're hopeful that we will see less litigation. We believe the Legislature is trying to help both sides to make insurance more affordable and provide additional transparency so that the insureds understand what's covered and what's not under their policies.

Robert Barton: Sure, and as it relates to the 25% rule, what are some of the best practices for carriers moving forward in that respect?

Allan Rotlewicz: The biggest ticket item is, when was the roof built? And that's not always an easy question to answer. It does require the insurance company to spend a few minutes and investigate, whether it's permitting records or property appraiser's website. Obviously reach out to your insured when you're initially starting the claim process and ask them for any documents they may have regarding when the roof was replaced.

There may be issues when the roof was replaced by a prior owner. But spend time to determine when the roof was last replaced and what building code was in effect at that time. Because that is a potential area of litigation if you can't establish that the roof was replaced after 2007.

Robert Barton: Allan, you said it a couple of times here. Obviously the overall goal of the changes to these statutes is to be more transparent and provide good customer service to the insureds. And by doing so we hopefully will see a reduction in litigation and therefore a reduction in cost for insurance policies. That's obviously the goal. What would you say are the key takeaways for insurance carriers to remember moving forward?

Allan Rotlewicz: Keep in mind that for your insureds, this may be their first insurance claim. And it's a stressful process, and it's not always an easy process. So be transparent. Explain to them the process. Explain to them what they can expect. And most importantly, provide them great customer service so that throughout the claims process they feel like they've received the information they need. They understand what's happening. And when a claim determination is made, they understand how the insurance company reached that determination and how it's the correct determination based upon the insurance policy.

Robert Barton: Thanks Allan for sharing your insights today. I want to take a moment to thank our listeners for sticking with us. We hope you found the conversation insightful and helpful. If you have any questions about claims handling or other insurance coverage questions, you can find our contact information at www.Rumberger.com or connect with us on LinkedIn. If you don't want to miss an episode of Legally Qualified, be sure to subscribe wherever you listen to podcasts. Have a great rest of your day.

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