Hurricane Claims and Valued Policy Law

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GET FULL RECOVERY ON A TOTAL LOSS

With last year's hurricanes hitting numerous parts of the United States, and the 2005 hurricane season underway, are we ready to make sure insurance companies pay their insureds/our clients what they are rightfully owed?

Your clients come to you and state that their property was destroyed as a result of a natural disaster such as a hurricane. As we all know, hurricanes commonly result in a combination of wind and flood damage. The clients have already gone through the appraisal process and been denied by their carrier. What is the next step? If the insurance company does not tender the insured's policy limits, then you will mostly likely deal with valued policy law.

While we expect insurance companies to do the right thing and pay legitimate claims when their insureds get hit by a natural disaster such as a hurricane, we have all had experiences with insurance companies that refuse to live up to their end of the bargain. It is time to ensure that our clients are not taken advantage of, and that we protect their rights. This article will focus on Valued Policy Law, its application in total loss cases, and the measures we can take to protect our client's interests.

In the typical total-property damage-loss case, we represent a homeowner who has wind insurance with one carrier and flood insurance with another. When there is a total loss to the property and/or the city has declared the property condemned or uninhabitable, insurance carriers generally blame one another in an attempt to reduce their share of liability and pay only a pro rata share as opposed to the face amount of the policy. Insurers should not be allowed to get away with this!

Many states follow Valued Policy Law (VPL). In Florida, VPL is codified and, states: "In the event of the total loss of any building . . . located in this state and insured by any insurer as to a covered peril . . . the insurer's liability, if any, under the policy for such total loss shall be in the amount of money for which such property was so insured as specified in the policy." See Fla. Stat. 627.702 (1).

DEFINING AND EXPLAINING VPL

What is it? What does it mean? How do we apply it to our clients' cases? Valued Policy Law also known as Valued Policy Statutes, at least in Florida, is part of every real property casualty insurance policy. There are two essentials in most statutes.

First, a building must be insured by an insurer as to a covered peril. Second, the building must be a total loss. If these two factors exist, the VPL mandates that a carrier is liable to an owner for the full amount of the policy, no matter what other facts are involved as to the cost of repairs or replacement. Basically, if the insurance carrier has any liability at all to the owner for a building damaged by a covered peril deemed a total loss, the carrier's liability is the full amount of the policy.

Valued Policy Law . . . sets the amount payable when there is a total loss. As one court has explained:

> In cases decided under the valued policy statutes, however, the courts have uniformly held that upon a showing that the demolition was required by law the insured may recover as for a total loss. *Dinneen v. American Ins. Co. of City Newark, N.J.*, 152 N.W. 307 (Neb. 1915); *Palatine Ins. Co. v. Nunn*, 55 So. 44 (Miss. 1911); *Scanlan v. Home Ins. Co.*, 79 S.W.2d 186 (Tex. Civ. App. 1935); *Hart v. North British & Mercantile Ins. Co.*, 162 So. 177 (La. 1935). The policy provision contracting against liability for enforced demolition is held to be overridden by the statute if the loss is total by reason of such demolition. *Fidelity & Guar. Ins. Co. v. Mondzelewski*, 115 A.2d 697, 699 (Del. 1955).

The wind insurer or flood insurer usually argue that those elements did not cause all of the damage to their insured's property and that the insurers should not be held responsible for paying the total loss or face value of same.

Therefore, under the anti-concurrent cause clause of their respective policies, they take the position that they are excluded and do not have to pay the claim. Although this argument is wrong, many courts have accepted it. One might ask, why do insurance companies have to tender the full policy limits as opposed to paying their pro-rata share of the damage? Good question.

The policy behind VPL is best summarized by Patterson, where he opines:

> *Patterson, Essentials on Insurance Laws*, s 32, pg. 118, attributes the passage of valued policy statues to the indifference of insurance agents to the amount of insurance which their customers needed; to the fact that agents received larger commissions by selling the insured needless protection; and to the fact that the honest insured paid unnecessarily premiums and the dishonest insured was tempted to commit arson. But even so, according to Patterson, the insurance companies found it more economical to pay excessive claims than to make an appraisal of every property insured. Thus, the purpose of the valued

policy statutes is twofold: (1) prevent over-insurance by requiring prior valuation; and (2) to avoid litigation by prescribing definite standards of recovery in case of total loss. *Nathan v. St. Paul Mut. Ins. Co.*, 243 Minn 430 (Minn 1955) (Citations omitted).

VPL is not an unfair scheme. The insured is limiting his recovery and the insurer is basing its premium charges on the extent of its maximum exposure. In this regard, when a total loss occurs neither can contend the value of the destroyed property is any different from what they had previously specified. See *Millers' Mutual Insurance Assn v. La Pota*, 197 So. 2d 21, 24 (Fla. 2d DCA 1967); *Mierzwa v. Florida Windstorm Underwriting Assn*, 877 So. 2d 774 (Fla. 4th DCA 2004).

In sum, VPL is a tool that has been in existence for quite sometime but is often overlooked. With the recent wave of hurricanes and other natural disasters throughout the United States, do not shy away from applying Valued Policy Law to benefit your clients.

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