represented the insured.

The insurance company denied coverage for a hammer that was dropped resulting in one broken tile. Avatar claimed that tile damage was excluded as "Wear and tear, marring and deterioration."

The trial court affirmed the appraisal award for $19,000.00 and entered judgment finding that the exclusion did not apply. The appellate court sided with the trial court and upheld the judgment in favor of our insured.

We are presently pursuing a bad faith claim against Avatar.

ACCORD AND SATISFACTION

ACCEPTANCE OF UNDISPUTED PAYMENT

UNITED PROPERTY AND CASUALTY INSURANCE CO.

APPELLANT,

v.

ARMANDO VALLADARES ET AL.,

APPELLEES.

Opinion filed October 19, 2011.

The Appellate Court ruled in favor of United Property and Casualty that had paid Valladares $23,000 to repair their home's broken water pipes. Valladares accepted the check without reservation, and thus any suit for additional payments relating to the same claim was deemed without merit because the claim existed at the time.

After receiving the benefit of United's payment of $23,000, Valladares sued United for breach of contract, alleging United failed to pay for the loss of use of the home during the time the pipes were broken.

United responded by restating its position that the policy excluded the loss, and contended that in any event it had already settled the dispute by making the $23,000 payment. The trial court entered summary judgment in favor of Valladares for loss of use benefits and statutory interest. The parties entered into a joint stipulation for entry of final judgment in the amount of $46,335, reserving the right to appeal the judgment. United appealed this judgment.

The court found no need to construe the policy at issue in this case, because Valladares' coverage claim was settled when they accepted the $23,000 payment from United. The $23,000 check specifically referenced the Valladares' claim for damage resulting from the broken water pipes, the sole pending claim from Valladares under the United policy. Valladares accepted this payment without reserving any rights to other claims for damages resulting from the broken water pipes. Thus, the facts indisputably showed Valladares accepted an offer for settlement of that claim.

Valladares could have objected to the settlement payment and reserved their rights to claim further damages due to loss of use, but they did not. Because the payment was intended to resolve the coverage dispute arising from the water pipe loss, and was accepted without reservation, the payment was an accord and satisfaction as to the losses known and alleged at that time.

Therefore, Public Adjusters be leary about letting the client cash a check without protest. There must be a meeting of the minds between the client and

insurance company.

There is case law that endorsing a check under protest is not sufficient.

When working a settlement, we suggest that the Public Adjuster send a certified letter informing the insurance company that the amount does not cover all the damages and detailing the facts of what is not being paid for. Be clear that the payment is for undisputed damages only and is not a final settlement of all claims.

One step further: after sending the letter and getting the receipt, discuss with the insurance adjuster as to what was paid for and what was not paid for. Again, send a certified letter regarding your conversation. Then cash the check after you receive the certified confirmation receipt. Clearly object to the settlement that it does not cover the damages alleged by the client.

F.I.G.A. - ATTORNEY'S FEES

FLORIDA INSURANCE GUARANTY

ASSOCIATION,

APPELLANT,

v.

JAMES SMOTHERS,

APPELLEE.

The Florida Insurance Guaranty Association (F.I.G.A.) appealed an award of attorney's fees against it, pursuant to section 631.70, Florida Statutes (2008). It argued the trial court erred in finding that F.I.G.A. denied coverage by affirmative action other than delay. The Court agreed with F.I.G.A.

F.I.G.A. wrote to the insured indicating that is was paying $3,841.35 minus the applicable deductible for a total payment of $981.35. The letter did not indicate that F.I.G.A. denied coverage. The record did not indicate that the insured objected to the amount tendered.

The trial court granted the insured's motion to determine attorney fees and costs.

F.I.G.A. is not responsible for the payment of an insured's attorney's fees and costs unless it denies the claim by affirmative action other than delay.

Here, F.I.G.A. never denied coverage.

F.I.G.A. is responsible for attorneys' fees only when it "denie(s) coverage by affirmative action." other than delay, and there is an underlying entitlement to fees pursuant to Section 627.428, Florida Statutes.

We hold that a dispute about the amount of damages does not constitute a denial of coverage by affirmative action.

As there was no denial of coverage by affirmative action, the court therefore reversed the judgment for the insured and remanded the case to the trial court for entry of judgment for F.I.G.A. See F.I.G.A. v. Messina 2011 WL 3687406 (FL. 4th DCA 2011) allowing Fees against F.I.G.A.

STATUTE OF LIMITATIONS

VIEW WEST CONDOMINIUM ASSOC. INC.,

PLAINTIFF,

v.

ASPEN SPECIALTY INSURANCE

COMPANY.

DEFENDANT.

This matter was before the Court on Defendant's Motion to Dismiss Count I of the Amended

Complaint with Prejudice. In Count I, Plaintiff sought to bring a claim for breach of a property insurance contract more than five years after the date of the loss. The Court granted the motion and dismissed Count I with prejudice because the claim was deemded to be time-barred.

While the case was stayed, on May 17, 2011, Florida Governor Rick Scott signed into law Senate Bill 408 ("SB 408") which amended Florida Statutes § 95.11 to provide that "an action for breach of a property insurance contract, (must be brought within five-years), with period running from the date of the loss.

This court found the five-year Statute of Limitations for new claims runs from the Date of the Loss.

Relying upon Court decision interpreting earlier versions of Florida Statutes § 95.11, Plaintiff argues that the five-year statute of limitations runs from the date of breach and not the date of the loss. Prior to enactment of SB 408, the statute of limitations began to run from the date of breach, which was when the insurer denied the claim, not the date the loss occurred. State Farm Mutual Auto, Ins., Co. v. Lee, 678 So. 2d 818,821 (Fla. 1996) After passage of SB 408, the limitations period unequivocally runs from the date of the loss. Here, the date of the loss was August 25, 2005. Plaintiff filed this lawsuit on October 23, 2010, and waited until July 11, 2011 to amend its Complaint to add a claim for breach of property insurance contract based upon Hurricane Katrina damages. Because Plaintiff brought its Hurrican Katrina claim more than five years after the date of this loss, the claim was deemed barred by the statute of limitations. We should argue that SB 408 is not retroactive and § 95.11 applies to losses prior to passage of SB 408.

PRE-SUIT REQUIREMENTS

DIANE SIMON GONZALEZ, APPELLANT,

v.

STATE FARM FLORIDA INSURANCE COMPANY, APPELLEE.

The Court affirmed summary judgment entered below for the insurer on the ground that the insured failed to comply with the pre-suit requirements of the policy, in spite of providing among other things, a satisfactory proof of loss and submitting to an examination under oath. See Edwards v. State Farm Florida Ins. Co., Case No. 3D10-2062 (Fla. 3d DCA June 15, 2011), next case, and cases cited therein. In particular, the court found no error or abuse of discretion in the trial court's denial of insured's request to "abate" the action, which was first made almost five years after the loss and only in the face of an imminent ruling against her at the hearing on the carrier's motion for summary judgment.

Affirmed.

PRE-SUIT REQUIREMENTS

LEROY EDWARDS, APPELLANT,

v.

STATE FARM FLORIDA INSURANCE COMPANY, APPELLEE.

In 2008, Edwards submitted a supplemental loss claim to State Farm for the 2004 Hurricane Frances loss. State Farm repeatedly requested that Edwards provide documentation of his claimed loss and submit to an examination under oath, and warned Edwards that his failure to do so would violate the terms of his policy. Edwards, however, ignored

State Farm's requests, and instead, served State Farm with a complaint for breach of contract on June 29, 2009. The trial court concluded Edwards did not comply with conditions precedent to payment under his insurance policy by not appearing for an E.U.O. The trial court granted State Farm's motion for summary judgment, and entered final judgment in State Farm's favor. The record clearly supports the trial court's finding, it is affirmed.

APPRAISAL-MEDIATION

UNIVERSAL PROPERTY AND CASUALTY INSURANCE COMPANY, APPELLANT,

v.

ARMANDO COLOSIMO AND PATTY

COLOSIMO, APPELLEE.

Background: Insured homeowners filed suit against insurer for breach of contract. Insurer filed motion to appoint neutral umpire and proceeded with contractual loss appraisal process. The Circuit Court, Miami-Dade County, David C. Miller, J., denied the motion. Insurer appealed.

Holding: The District Court of Appeal, Cortinas, J., held that insurer did not provide requisite notice of state mediation program to insureds.

Affirmed.

Although homeowners voluntarily commenced contractual loss appraisal process for insurance claim, through conclusion, appraisal is waived where insurer failed to provide statutorily required notice of state mediation program. § 627.7015. Fla. Stat. (2009).

DISCOVERY

NATIONWIDE INSURANCE COMPANY OF FLORIDA, PETITIONER,

v.

COOKIE ROBERTA, TRUSTEE OF THE SONIA E. DANN TRUST,

RESPONDENT

Background: Insured moved to compel discovery of claim file documents insurer claimed were work product in insured's first-party breach of contract action against insurer. The Circuit Court, Pasco County, W. Lowell Bray, Jr. J., entered nonfinal order granting motion. Insurer petitioned for certiorari review and sought to quash order.

Holding: The District Court of Appeal , Davis J., held that: (1) certiorari review of discovery order was warranted, and (2) insurer was not required to disclose claim file documents.

Petition granted and order quashed.

The Court in Mastrominas, 6 So. 3d at 1258 n. 2, emphasized that the opinion should not be read as precluding appropriate discovery to the extent specific materials are discoverable. See (Am. Home Assur. Co. v. Vreeland, 973 So. 2d (668) 672 (Fla. 2d DCA 2008). Althought a claims file is generally not discoverable, to the extent that materials contained therein are relied on at trial, those items may be discoverable. See Northup v. Acken, 865 So.2d 1267, 1271 (Fla. 2004) (holding that materials reasonably expected or intended to be used at trial are subject to discovery).

FIGA - COVERAGE DENIED

FLORIDA INSURANCE GUARANTY ASSOCIATION, INC.

APPELLANT,

v.

LOUISE MESSINA,

APPELLEE.

After having filed an answer and affirmative defenses affirmatively denying coverage for the claim and amount of damages, F.I.G.A. proceeded to settle the claim. Without showing the circumstances of the settlement and whether there was a real contest to the claim, F.I.G.A. has not provided an appellate record sufficient for this court to consider its contentions that it did not deny coverage by affirmative action other than delay. See Applegate v. Barnett Bank, 377 So.2d 1150 (Fla.1979).

Therefore since there is a denial of coverage the appellees Louise Messina would be entitled to attorney fees and costs.

OVERHEAD AND PROFIT CLAIMS

TRINIDAD

v.

FLORIDA PENINSULA INSURANCE

The Florida Third District Court of Appeal held that a homeowner was not entitled to overhead and profit as damages from a fire in his home. In this case, the insurance company admitted coverage and made a payment towards repairs. The homeowner, however believed that he was not paid in full for his claim as he was not paid overhead and profit. Overhead and profit are part of the costs paid to a contractor to make repairs and are normally charged to consumers. The homeowner claimed that he was entitled to overhead and profit even though he did not hire a contractor, because they are replacement costs and it is his choice as to whether to make the repairs with a contractor or not. The Appellate Court rejected this argument and found that the insurance company was only required to make payments for overhead and profit under a replacement cost policy when the homeowner actually incurred those costs or became contractually obligated to do so with a contractor. The insured did not spend any money on overhead or profit, therefore he was not entitled to payment for same under the replacement cost insurance policy.

WELCOME NEW ATTORNEYS

ELA M. HERNANDEZ

Ela received a B.A. degree in Political Science and International Relations cum laude, from Florida International University. She later pursued her J.D. from the University of Florida College of Law. She has had experience in first party property disputes prior to joining our Firm.

PETER MASKOW

Peter earned his Bachelor of Arts in History, cum laude, from Ohio University and his Juris Doctor from the University of Kentucky College of Law. He was a member of both the Trial Advocacy Board and the Moot Court Board.

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