

# INSURANCE DISPUTES IN THE BAHAMAS, POLICY HOLDER BEWARE



By Ramonne Gardiner | May 2025

## Insurance Disputes in The Bahamas, policy holder beware

Fires, Hurricanes, Floods and other perils are often unexpected catastrophic events. With global warming projected to generate costlier natural disasters in the future, it becomes vital for policyholders to ensure that they not only have insurance coverage, but that they comply with their contractual terms for their claims to be honored. Additionally, policyholders should always seek legal advice to ensure that their claims are not being wrongfully denied. This article sets out some of the important considerations for a policyholder.

### Principles of Interpreting Policy

Generally, the Court will adopt an objective, business common sense approach in interpreting a policy. In FCA v Arch Insurance[1], the Court held that it should not interpret a policy as a pedantic lawyer, but as an ordinary policyholder who on entering into a contract “*is taken to have read through the policy conscientiously in order to understand what cover they were getting.*” Thus, a policyholder should be mindful to obtain independent legal advice in interpreting a policy and not rely on the interpretation of the Insurer and/or an agent in interpreting a policy.

Additionally, if a policy is ambiguous or unclear, the Court may apply the *contra proferentum* rule which means that a Policy will be construed against the Insurer who drafted the policy in the event of any ambiguity[2].

It is essential that each policyholder pay attention to:

- Notification clauses;
- Definitions and Exclusions; and
- Conditions and Warranties.

### Notification Clauses

An insurance policy typically contains a notification clause which provides a set period of time by which a claim must be reported. As soon as a claim occurs, a policyholder must be mindful to make a claim strictly in accordance with the clear wording of the policy.

A policy containing language that a claim should be reported “*as soon as possible or practicable,*” will be interpreted in accordance with the surrounding facts and circumstances of the claim. However, a requirement of “*immediately*” and “*directly*” imposes a more stringent obligation to report the claim.[3]

In the English Court of Appeal decision of Jacobs v Coster & Avon Insurance[4], the relevant notification clause stated:

*“If any event gives or is likely to give rise to a claim, the Insured (or his representative) must: report the details immediately to the Company and send a written claim within thirty days...”*

In that case, an accident occurred at the Insured's business. There was no evidence at the time that the Insured was at fault. Several months later, the injured party's lawyers informed the insured of potential litigation. As a result, the insured notified his Insurer. The Insurer denied coverage on the basis that the notification clause was breached. The Court of Appeal, however, held that the notification obligation had to be applied objectively taking into account the Insured's knowledge. It found no evidence that the Insured knew a potential claim would arise until the victim's lawyers made contact.

## **Waiver**

Critically, even in circumstances where an Insurer has a legitimate basis to not honor a claim, there are circumstances where Insurers have still been liable under a Policy because they have waived liability by their words, actions or conduct.

A waiver can occur where the Insurer has knowledge of the facts had a reasonable opportunity to make up their mind regarding the denying the claim and expressly, or by inference, waives breaches of the Policy<sup>[5]</sup>. A waiver can occur even if the insurer has reserved his rights.<sup>[6]</sup>

## **Conclusion**

It is critical that a policyholder seeks legal advice whenever they are faced with a policy dispute. The author of this article has settled and litigated numerous policy disputes including personal injury, property and construction claims.

*For further information please contact [Ramonne Gardiner](mailto:Ramonne.Gardiner@lennoxpaton.com) at Lennox Paton by telephone at 242-502-5054 or by email at [rgardiner@lennoxpaton.com](mailto:rgardiner@lennoxpaton.com).*

## **References**

- [1] See *FCA v Arch Insurance* [2021] UKSC 1.
- [2] See *Taberna Europe CDO II plc v Selskabet AF1 (formerly Roskilde Bank A/S)* [2017] 2 WLR 803 and *Nobahar- Cookson v The Hut Group Ltd* [2016] EWCA 128.
- [3] See *Contract Volume 22* (2019) clause 292.
- [4] See [1999] EWCA Civ 647.
- [5] See *Colinvanx's Law of Insurance* at page 117.
- [6] See *Wilken and Villiers the Law of Waiver, Variation and Estoppel*.