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First District Court Of Appeal Upholds OIR's Position On Sinkhole Coverage

It should come as no surprise that Florida's Office of Insurance Regulation (OIR) reports that Florida has more sinkholes than any other state in the country. Sinkholes are a problem of two extremes. The number of questionable sinkhole claims insurers pay for relatively minor cracks in walls and driveways is unprecedented. Those claims stand in stark contrast to the recent report of a sinkhole swallowing part of a home, killing a man while he slept.

Under Florida Statutes Section 627.706, property insurers are required to offer coverage for "catastrophic ground collapse" as well as optional coverage for sinkholes. "Catastrophic ground cover collapse," which is included with a basic homeowners policy, is generally defined as geological activity that results in the abrupt collapse of ground cover, clearly visible to the naked eye, with structural damage to the building and foundation resulting in condemnation. "Sinkhole coverage," which is available to homeowners for an additional premium charge, covers damage more broadly. Thus, repairs of cracks in walls and driveways may be paid if a policyholder has sinkhole coverage, whereas claims for homes swallowed by sinkholes will be paid under the basic homeowners policy.

The OIR reported that sinkhole claims rose from \$209 million in 2006 to \$406 million in 2009, with total sinkhole costs of approximately \$1.4 billion from 2006 through 2010. In response to the explosion of sinkhole claims and alarming rise in sinkhole-related fraud, legislative reforms were enacted as part of Senate Bill 408 (SB 408)

in 2011, to assist Florida insurers in limiting liability for questionable sinkhole claims. The provisions of SB 408 include a two-year statute of limitations for sinkhole claims and new definitions of what constitutes a sinkhole.

Florida Farm Bureau Casualty Insurance Company and Florida Farm Bureau General Insurance Company, in an apparent effort to address skyrocketing sinkhole losses, sought to amend its endorsement form limiting sinkhole loss coverage to 25 percent of the overall coverage amount of the insured home. The OIR rejected the proposed amendment, and the companies appealed in a case styled as *Florida Farm Bureau Casualty Insurance Company v. State of Florida, Office of Insurance Regulation*, under Case No. 1D12-2265 in the District Court of Appeal, First District.

At issue in the litigation is Section 627.706, which mandates that insurers provide catastrophic ground cover collapse and optional sinkhole coverages. Under the statute, insurers are required to provide optional coverage for sinkhole losses on any structure to the extent provided in the form to which the coverage attaches. The companies asserted that the "form" to which coverage attaches is the policy endorsement, while the OIR took the position that the form to which coverage attaches is the base property insurance policy.

The court rejected the companies' attempt to limit sinkhole loss coverage to a percentage of the overall coverage amount, finding that the

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proposed amendment “would permit insurers to offer so little sinkhole insurance as to make the optional coverage valueless.” Thus, the court upheld the OIR’s decision, ruling that optional sinkhole coverage attaches to the base insurance policy. A copy of the court’s decision may be found on the court’s website at www.1dca.org.

Although SB 408 has had some positive impacts, sinkhole claims continue to be one of the major cost drivers of property insurance for Florida homeowners. ■

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