

A federal court in Missouri ruled that a church's failure to timely return a proof of loss form and provide other information to its insurance company excused the insurer from any duty to provide the church with coverage for repair costs stemming from damage sustained by a storm.

Background

An insurance company (the "insurer") issued an insurance policy to a church (the "church") to insure its properties. The church claimed it sustained substantial property damage after a severe storm on March 27, 2020.

The insurer received the claim on March 31, 2020. On April 2, 2020, and April 13, 2020, the insurer's third-party adjuster met with the church's representative to inspect the damage to the property. On May 26, 2020, the adjuster issued an estimate based on the engineering report completed after the inspections.

As a result, the insurer issued two partial payments to the church totaling \$237,852.24. Once the payments were issued, a disagreement arose between the parties as to the amount of loss.

On June 3, 2020, the church sent a demand for appraisal to reevaluate the damage to its property. On June 9, 2020, the insurer acknowledged the demand for appraisal and requested that the church submit any documents supporting its claim.

On November 24, 2020, after the church informed its insurer that the appraiser would be reappraising the entire claim, including damages that the insurer had already issued partial payments for, the insurer requested that the church submit a revised demand for appraisal. The church also suggested to the insurer that its appraiser's estimate would be more than \$2 million. On December 3, 2020, the church submitted a revised demand for appraisal.

Insurer: The church didn't comply with the "cooperation agreement"

On December 4, 2020, the insurer notified the church that to move forward in the appraisal process it would require a proof of loss form, supporting documents, and a representative to submit to an examination under oath (EUO). The insurer reiterated its requests in a letter dated December 10, 2020, after the church did not respond.

On February 18, 2021, the church filed a lawsuit against the insurer, alleging one count of breach of contract and one count of "vexatious refusal." (Under Missouri law, an insured can bring a vexatious refusal claim if it believes an insurer refused to pay a claim "without reasonable cause or excuse.")

The insurer alleged that the church failed to comply with the "cooperation agreement" in its policy, and so the court should dismiss the case. The court noted that cooperation clauses in insurance policies are valid and enforceable in most states. Such clauses obligate the insured to cooperate fully with the insurer in its investigation of a claim. An insured's failure to assist in the investigation "precludes any coverage."

To deny coverage, an insurer must prove: "(1) a material breach of the cooperation clause; (2) the existence of substantial prejudice as a result of the breach; and (3) the exercise of reasonable diligence to secure the insured's cooperation."

The court concluded that all three elements were established.

1. Material breach of the cooperation clause

The court concluded that “the failure to provide, or the untimely submission of, a proof of loss form constitutes a material breach of the [policy’s] cooperation agreement” and so there was “a material breach of the cooperation agreement because [the church] did not submit a proof of loss form within sixty days of [the insurer’s] request.”

The court observed:

On December 4, 2020, [the insurer] requested that [the church] submit a proof of loss form within sixty days. [The insurer] reiterated its request for a proof of loss form on December 10, 2020. ... Since [the church] did not submit a proof of loss form within sixty days, there was a material breach of the cooperation agreement. ...

[The church] also breached the cooperation agreement when it did not submit to an EUO. [The insurer] requested an EUO in its letters dated December 4, 2020, and December 10, 2020. ... [The insurer] stated that it would schedule an EUO after it received [the church’s] proof of loss form. However, [the church] did not submit to an EUO, but filed suit instead. Therefore, there was a material breach of the cooperation agreement when [the church] did not submit to an EUO.

2. The insurer suffered substantial prejudice when the church breached the cooperation agreement

Quoting two different cases, the court stressed:

“Once a material breach has been established, an insurer must prove that it was substantially prejudiced by the insured’s breach in order to be excused from covering the loss.” ... “Prejudice can be established when the insured fails to comply with a reasonable examination request because the insured has perhaps the greatest knowledge of the circumstances[.]”

The court continued:

[W]hen [the church] failed to submit the proof of loss form and to an EUO[,] it substantially prejudiced [the insurer]. [The insurer] had finalized its estimate and issued payments for the damages to [the church’s] property. However, [the church] submitted a demand for appraisal, with estimates that its appraiser would be submitting a claim for over \$2,000,000. Thus, ... [the insurer] naturally requested more information to effectively evaluate the demand for appraisal, including the proof of loss form, supporting documents, and an EUO. When [the church] did not comply, it substantially prejudiced [the insurer] because it could not possess all the information needed to investigate the claim.

3. The exercise of reasonable diligence to secure the insured’s cooperation

Lastly, the insurer must prove that it exercised reasonable diligence to secure the cooperation of the insured. The court stated:

Here, [the insurer] ... exercised reasonable diligence in attempting to secure [the church’s] cooperation. As soon as [the insurer] received [the church’s] revised demand for appraisal[,] it sent a letter the next day requesting that [the church] submit a proof of loss form, supporting documents and comply with an EUO. [The Insurer] enclosed the proof of loss form in its letter. [The church] did not respond. [The insurer] followed up by sending another letter on December 10, 2020, reiterating its request for a proof of loss form, supporting documents, and an EUO. [The church] once again failed to respond or submit the documents. Instead of responding or submitting documents to [the insurer], [the church] filed suit. Based on these facts, [the insurer] exercised reasonable diligence to secure the cooperation of [the church].