



**AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:**

51/F/ custodian department for MGM Studios at Disney World

**FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:**

N/A

**DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:**

On November 30, 2010, Plaintiff, Cedi Philemond, contacted her homeowners insurer, State Farm Florida Insurance Company, regarding a leak located in a pipe under the floor in her master bedroom. On December 1, 2011 a State Farm representative inspected the house with Ms. Philemond and her daughter and took a recorded statement of the daughter.

At that time the insured's daughter reported that they had received an excessively high water bill but there was no visible damage to the insured's property. A plumbing company visited the insured's home and advised the insured that there was a leak six inches under the slab by the toilet.

Despite there being no visible evidence of physical damage to the property at the time of State Farm's inspection, an estimate in the amount of **\$37,445.96** prepared by a public adjuster was submitted to State Farm regarding damage purportedly done to the home.

On February 24, 2011 counsel for State Farm took the examinations under oath of both Plaintiff and her daughter. Significantly, neither woman identified any standing water on the premises or damage done to either the structure or personal property as a result of the purported water leak.

Following the EUOs Plaintiff filed a complaint for breach of contract against State Farm on that same date, February 24, 2011. State Farm answered Plaintiff's complaint and asserted the Affirmative Defense that Plaintiff had failed to comply with all conditions precedent by not providing a sworn proof of loss.

On April 27, 2011 Defendant filed a Motion for Summary Judgment. Defendant cited the policy language requiring

the insured to submit a sworn proof of loss within 60 days after an incident. Defendant also cited the policy language providing that no suit shall be brought against State Farm unless there had been full compliance with the policy provisions.

At a November 30, 2011 hearing before Judge Stan Strickland, Defendant argued that Ms. Philemond had failed to comply with the condition precedent in providing State Farm with a sworn proof of loss. State Farm relied on the affidavit of its claim representative reflecting that a sworn proof of loss had been forwarded to the insured on January 13, 2011 but that Plaintiff had failed to return it before filing suit as required by the terms of the policy.

Plaintiff argued that State Farm had waived the submission of the Sworn Statement in Proof of Loss by waiting until January 13, 2011 to forward it to Ms. Philemond and then not bringing it to his attention once he became her lawyer subsequent to the submission of the claim.

Defendant relied on the 5th DCA's decision in ***Starling v. Allstate***, 956 So. 2d 511 (Fla. 5th DCA 2007). In ***Starling*** the 5th DCA held that the insured had materially breached Allstate's policy's condition precedent that she provide within 60 days a sworn proof of loss by not submitting the document until three months after she had filed the lawsuit.

Judge Strickland's closing comments at the time of the hearing were that a final dismissal of the lawsuit seemed a harsh result based on an insured's simple failure to submit a document.

**CAUSE OF INJURY:**

Claim for property damages as a result of leaking pipe.

**NATURE OF INJURY:**

N/A.

**EXPERT WITNESSES** [include full name, degree, specialty and city]:

**PLAINTIFF'S:** N/A

**DEFENDANTS':** N/A

**SUMMARY JUDGMENT:**

Final Summary Judgment in favor of Defendant, State Farm. Judge Strickland found that Plaintiff, Cedi Philemond, failed to meet all conditions precedent to coverage under her policy by failing to submit to State Farm a sworn proof of loss. Judge Strickland further found that the record was devoid of any reasonable explanation by the Plaintiff for her refusal to provide a sworn proof of loss prior to filing the lawsuit.

**DATE OF SUMMARY JUDGMENT:**

December 6, 2011.

**DEFENDANT'S OFFER:**

Zero.

**PLAINTIFF'S DEMAND:**

None.

**PLAINTIFF'S ATTORNEY'S COMMENTS:**

**DEFENDANTS' ATTORNEY'S COMMENTS:**

While many of the appellate courts have recently struggled with interpreting insurance policies' conditions precedent and subsequent, Judge Strickland properly applied the long standing law regarding the failure of an insured to comply with a condition precedent as a total bar to recovery.

Submitted

Date: May 30, 2012

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