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The Top Property Insurance Decisions of 2024 So Far

By **Eli Flesch**

Law360 (July 11, 2024, 8:18 PM EDT) -- Two major state supreme court decisions on insurance coverage for pandemic losses and a Colorado ruling on whether policyholders can be excused for making late homeowners claims are among the top property insurance decisions of 2024 so far.

Here, Law360 looks at seven rulings implicating property damage or policies:

New York and California Weigh In on Pandemic Losses

In turning back a restaurant operator and a concert venue manager's bid for coverage of their pandemic losses, both the top courts in New York and California said the coronavirus generally doesn't cause the kind of typically insured property damage.

The February decision from New York means Westport Insurance Corp. will avoid paying around $50 million in Consolidated Restaurant Operations' business interruption losses tied to the COVID-19 pandemic and government restrictions.

Despite decisions by the top courts in New York and California denying COVID-19 coverage, experts say that many state high courts have yet to take up pandemic coverage issues, and even in California and New York the courts didn't rule out the possibility of coverage in all instances. (Catherine Ivill/Getty Images)

In California, the state Supreme Court's May decision will allow a Chubb unit to avoid coverage for Another Planet Entertainment LLC, which operates such venues as the Greek Theatre at UC Berkeley and the Fox Theater in Oakland, California.

Despite the ruling, experts say that many state high courts have yet to take up COVID-19 coverage issues, and even in California and New York the courts didn't rule out the possibility of coverage in all instances.

"As far as COVID is concerned, I think there's quite a bit of litigation coming down the pike," said Peter A. Halprin, a policyholder attorney with Haynes and Boone LLP.

But experts also acknowledge that the rulings counter most of the arguments made by policyholders seeking coverage. So with the decisions in the Golden and Empire states, two very important

commercial venues, policyholders will have a very difficult time at best in securing pandemic coverage under "all-risk" policies.

The cases are Consolidated Restaurant Operations Inc. v. Westport Insurance Corp., case number 450839/21, in the Court of Appeals of the State of New York; and Another Planet Entertainment LLC v. Vigilant Insurance Co., case number S277893, in the Supreme Court of the State of California.

Colorado Extends Notice-Prejudice Rule to Homeowners Claims

A rule excusing some policyholders for filing late claims applies to first-party homeowners' property policies, a divided Colorado Supreme Court held in March, reversing two insurers' wins in a pair of coverage disputes over hail damage.

The ruling stands out for what some attorneys have described as a trend favoring policyholders that allows more flexibility for late claims if the insurers aren't prejudiced in some way by the late filing. The 4-3 court decided, in part, that there were also public policy objectives of compensating injury victims to support their finding.

"We disagree with the contention that the notice deadlines of the occurrence policies at issue here were fundamental terms of those insurance contracts," the court said. "So concluding effectively converts the policies at issue to claims-made policies."

While the cases concerned hail damage, experts say the decision could affect late notice claims for any manner of property damage in a state with many disaster risks. Smoke-related damage in particular can be hard to identify in full following a disaster.

"It's a hard line to have to bring suit within one year of the damage," said Marc T. Ladd, an attorney with Cohen Ziffer Frenchman & McKenna who represents policyholders. "I would like to see in the next year, how many courts — especially ones that are closer to Colorado — might follow this same trend."

Thomas Bush, an attorney with Smith Gambrell & Russell LLP who represents insurers and reinsurers, also noted that growing trend to expand notice-prejudice rules.

"Go back 100 years, these notice rules were applied rather strictly," he said.

The cases are Gregory v. Safeco Insurance Co. of America, case number 2022SC399, and Runkel et al. v. Owners Insurance Co., case number 2022SC563, in the Colorado Supreme Court.

Texas Insurance Rulings Hit on Free Speech, Appraisals

In June, the Supreme Court of Texas tossed a roofing company's challenge to the state's public adjuster licensing laws, saying that requiring a license or preventing certain conduct didn't violate the roofer's free speech rights.

Experts said a finding otherwise could have jeopardized laws requiring licensure to practice other professions, including the law. The court explained that the statutes challenged by the roofer "do not regulate or restrict speech but, rather, representative capacity with a nonexpressive objective: employment."

Steve Badger, a carrier-side attorney with Zelle LLP, said he hoped the decision would result in less misleading advertising from roofing companies about their role in the insurance claims practice. The laws in question prohibit roof contractors from also acting as adjusters on the same claim.

"The Texas Supreme Court has now spoken as to the constitutionality of the public adjuster licensing statute, and said that it's fine," said Badger, who filed a brief on behalf of insurer trade groups in the dispute. "The court has provided some direction now as to what constitutes the unauthorized practice of public adjusting."

Another February decision from the court attempted to help resolve a split in opinions in the Fifth Circuit over an insurer's liability for attorney fees when a carrier pays out an appraisal award in homeowners claims. Texas' top justices, answering a certified question from the Fifth Circuit, said there was no such liability.

The court highlighted language from a decision in the Eastern District of Texas, Morakabian v. Allstate Vehicle & Prop. Ins. Co., to sum up its position: "Because [the insured] received payment of the appraisal award which covers his claim under the insurance policy, he necessarily has no remaining claim under [his] insurance policy."

The cases are Texas Department of Insurance et al. v. Stonewater Roofing Ltd. Co., case number 22-0427, and Mario Rodriguez v. Safeco Insurance Co. of Indiana, case number 23-0534, in the Supreme Court of Texas.

U.S. Supreme Court and California Top Court Weigh Asbestos Dispute

The Supreme Court's finding last month that an insurer with a responsibility for its policyholder's Chapter 11 bankruptcy claims can intervene in those bankruptcy proceedings stood out as one relatively rare insurance-related decision from the U.S.' top court. Though a general liability case at heart, it has implications for claims of property damage.

The high court unanimously ruled that Truck Insurance Exchange qualified as a "party in interest" under Section 1109(b) of the Bankruptcy Code to challenge the proposed reorganization plan of its two insureds, Kaiser Gypsum Co. Inc. and parent company Hanson Permanente Cement Inc., which face numerous asbestos injury claims.

Experts say the ruling will likely give insurers greater leverage in reorganization negotiations and cause an influx of insurer objections in bankruptcy court. But others have said insurers already file objections in bankruptcy proceedings.

"Insurance companies see this as a huge win," said Michael John Miguel, a policyholder-side attorney with McKool Smith. "I don't think it's earth-shattering because they had, from time to time, been allowed to participate."

He highlighted another decision from the California Supreme Court in June, weighing a dispute between the same parties. The court said that under commercial general liability policies, a policyholder does not need to exhaust all its primary insurance issued across different policy periods before it can access excess insurance for a single policy period. The insured need only exhaust primary insurance for that single period, it said.

The cases are Truck Insurance Exchange v. Kaiser Gypsum Co. Inc. et al., case number 22-1079, in the U.S. Supreme Court; and Truck Insurance Exchange v. Kaiser Cement & Gypsum Corp., case number S273179, in the California Supreme Court.

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