



COCONUT TWIST

THE TRUTH AND TRAUMA OF A HURRICANE INSURANCE CLAIM

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She had arrived in Coconut Twist© to retire and enjoy her golden years in “the other half of the sunshine”. Sally had daydreamed for years in her Vermont hometown of the tropical warmth and relaxation awaiting her in Florida.

But it was that unpredictable hurricane season that blew around each summer that put an end to her enjoyment of that long-awaited dream. And it produced for her a catastrophic nightmare that one does not recover from with a strong cup of coffee.

The Florida Scrubber Hurricanes

It all began soon after she arrived in the Coconut Twist© Condominium Association. She loved the comfortable and scenic setting of her new home. She was also soon identified as one of those nice caring ladies with a can-do spirit who could be counted on. So, it wasn't long before the Association Board of Directors received a nomination for her to be on the Board. Saying yes to this leadership position only led to other responsibilities and, before long, she was elected as the Secretary / Treasurer. This gave her a five year run of constant record keeping of financials, maintenance records and legal filings as required by the State. But it was the last four years, during which the 2004 and 2005 hurricanes sliced throughout Florida, that her lifestyle was disrupted with deep seasons of panic, headaches and a dastardly gray cloud of despair over each and every day of her life. Walk with Ms. Sally through the trauma and nightmare of three hurricane claims investigations that disrupted her daily happiness and added relentless stress.

Three hurricanes blew through the Coconut Twist© county in 2004 and 2005. Three separate claims were filed for the property damages that occurred in each storm, with a combined property loss estimate of over \$12 million. Subsequently, all three claims adjusting events, along with requirements from the three separate insurance companies investigating each claim, created an unending chore for her to satisfy each of their demands for maintenance and financial records. These demands could only be handled by her since she was the controlling board officer with any awareness of Association records. It fell to her to promptly and accurately provide the documents in order for the adjustments and proper settlements to be completed.

The Insurance Company's Rights

One would think, particularly since never being involved with a large property damage claim, that all you had to do was call your insurance agent, timely report the claim and all would be handled promptly within a few months. Well, let's see what that thick document, called the *Condominium Association Commercial Insurance Policy*, might have to say about her role and the records of the Association. And this is where the nightmare began, in a little old paragraph stipulating **the rights of the insurance company** should a claim be filed.

Here's how the specific wording of contractual provisions read in the **Conditions** portion of the policy: paragraph **4. Your Duties After Loss**,

Item c: As often as we (the carrier) reasonably require:

- (1) Show us the damaged property;
- (2) Provide us with records and documents we request and permit us to make copies; and
- (3) Submit to examinations under oath while not in the presence of any other named insureds and sign the same.

Item d: Send to us, within sixty (60) days after our request, your signed, sworn proof of loss (a very strong legal document unknown to most insureds) which sets forth, to the best of your knowledge and belief:

- (1) The time and cause of loss;
- (2) Your interest and that of all others in the Covered Property involved, and all liens on the Covered Property;
- (3) Other insurance which may cover the loss;
- (4) Changes in title or occupancy of the Covered Property during the term of the policy;
- (5) Specifications of damaged buildings and detailed repair estimates;
- (6) The inventory of damaged and undamaged personal property described in Condition number 4.b., Your Duties After Loss.

So Many Documents, So Little Time

Now we graphically see what heavy load landed on top of Sally. The board members of course were very willing to affirm her role but not a one offered any meaningful “hands-on” help with this huge responsibility – that of constructing the history of all records of the Association’s administrative life for review by the insurance company’s claims departments. One’s mind goes numb just thinking about the pressure this must have been on her.

It was in this process that Sally discovered a certain work slip issued just over five years ago, prior to her involvement, for roofing and window repairs on two of the twenty-four buildings. As she could best decipher, an invoice was presented by J & H Roofing for \$4,700.00 for shingle repairs after a tropical system had moved through with 50 mph winds. It also included window recaulking for leaks noted in eight units in those same buildings. What was bewildering to her was that she could not see any record in the bank statement or the general ledger of the Association’s financial books that indicated that a check payment was made to J & H Roofing for this completed work. The only indication of any payment activity was a hand-written scribble on the invoice stating “*paid in cash*”. No initials, no nothing, other than that.

While trying to reconcile this record, she questioned Board President Harvey about his recollection of this since he had been president for seven years running. Harvey noted to her that it was indeed his brother-in-law that had been able to promptly respond to the repair needs, and that since Bill, the treasurer at that time, was laid up in hospital for repairs to his colon, he simply accessed the cash bin to pay the roofing company. That was that. Sally thus concluded that all she could provide for this event was a written explanation in the file of what Harvey said happened. The board membership had changed substantially during prior years so there was no other person on the board to compare this story with.

What might not be apparent at this point is how such a small roofing repair issue would balloon into a huge legal dilemma for wind damage claims occurring years later in 2004 and 2005. But here’s how it happened and the ramifications it produced.

The Adjuster Arrives

As the Beechwood Insurance Company began its claim investigation for the first 2004 hurricane claim, its assigned independent adjuster, while hunting like a hound dog through these historical repair records with Sally’s help, noted the name of the J&H Roofing repair company. This triggered an alert in his mind because he thought he had handled another troublesome claim which involved roofing and window repairs by this same contractor several years ago on a condo property wind claim in the same area. When he compared his records he indeed confirmed that was the case. In reviewing that claim investigation and how it was concluded, his instinctive suspicion was proved right when the file records revealed that this same contractor had submitted a phony invoice

for what was confirmed in his adjustment investigation to be for “no actual work” performance whatsoever. So, when he noted this activity in the Coconut Twist© claim, his alarms naturally went off. He contacted a trusted contractor friend that knew of the J&H Roofing company owners. He told him they were now doing business as ABCD Roofing since folding the other company two years ago into bankruptcy. But the names of the principals were still the same. Thus, the adjuster was able to make a few phone calls and direct some inquiries that divulged where their office was. His ultimate goal was to now secure accurate work and invoicing records, if they existed. He told Sally about this need and she confirmed to him that this was another situation where Harvey had simply explained to her that he had paid cash for the minor repair jobs. Was she aware of the work scheduled and if the repair activity took place, the adjuster asked? No, she replied, since she was out of state on family vacation in California that month. She replied that it was only Harvey that would have had access to the funds in order to pay the bill of \$14,800.00.

The Days of Reckoning Begin – Claim Denied

Thirty days later, Beechwood Insurance Company sent their first letter of denial of the 2004 wind claim, stating as grounds for denial that they suspected fraud and neglect of property maintenance. Sally was the first to read this letter and when naturally bringing it to Harvey’s attention, he promptly grabbed the original letter and abruptly dismissed her attention to it, saying he would bring that matter up at the next board meeting. This never happened and yet the board, with Harvey’s prodding, agreed to further pursue their wind damage claim with a local attorney and to also let that attorney handle their claims activities on the other two wind claims in 2004 and 2005 against two other insurance companies. What the Board didn’t know was that Harvey had secretly taken old banking and maintenance records off site to a private storage facility.

Now it’s 2008. Sally has spent the last four years of her life bombarded with daily anxiety and stress handling the exhaustive demands of the insurance companies who each are still investigating their claims. Because of the board’s decision to proceed with lawsuits against Gateway and Tumbleweed insurance companies for the second and third 2004 and 2005 wind claims, Sally has had triple the load of document research, adjuster interviews, long exhausting phone calls, constant inquiries from the board members, and late into the night board meetings each month. This has created an unbearable demand on her 70 year old body and mind. Not to mention the *Examinations Under Oath* that all three insurance company lawyers were requesting of her and board President Harvey, as they had a right to seek an answer to the mysterious “paid in cash” roofing and window repair events as well as explanations for missing maintenance records.

Now we witness the demise of what could've been a simple straightforward claim process for legitimate damages from these storms. The association had paid their premiums, they submitted their claims, and they let all adjusters have access to the properties for all damage assessments. And yet the whole process spiraled out of control because one sweet lady, acting ethically and with accuracy of records, testified during her examination under oath, that board President Harvey had told her that his brother-in-law had actually been taking care of repairs at Coconut Twist© for several years prior to her arrival.

Why Can't We All Just Get Along?

It all came to a head in the last board meeting. Most of the fellow board members realized in panic that their claims were heading south. One retired attorney on the board asked Harvey for an accounting of his own banking records during those specific repair and payment periods. Harvey stood up and blasted out, threatening the attorney that he would sue him for slander and resulting emotional distress if he continued those demands.

Another newly elected board member, John, had assumed the interim Secretary / Treasurer responsibilities in Sally's absence. He was a sophisticated and retired business owner and had grown very suspicious of Harvey's questionable manipulations of the board in past years and these allegations of bad faith performance. Immediately after Harvey's tirade, he stood up to announce that a recall vote demanding the recall of Harvey had been received by certified mail to the board three days earlier. According to Florida Statute 718.112 **Bylaws** (1) (j) 1, "*a special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests.*" Due to the emergency needs of the association, John proceeded to hold a recall approval vote. A majority of the unit owners voted approval of this recall and thus with statutory authority, John proceeded to certify the recall of Harvey's election as President. John authorized the dismissal and directed Harvey to leave the meeting immediately. The sum effect of this action, as he explained to Harvey and the members, was that all association records and documents in Harvey's possession, with emphasis on those records necessary for insurance claims action, must, by Statute mandates, be turned over to the board within five (5) business days.

John was also making it known to the board that a growing group of rightly disgruntled members had already met with legal counsel in regards to a possible action against the board for errors and omissions of their fiduciary duties to the association. When the meeting adjourned, several board members, old pals of Harvey's, immediately left the premises for a late night bull session at Denny's restaurant.

Coconut Twist© has indeed been appropriately named; twisted story lines, twisted records, twisted board events, twisted lives and twisted insurance settlements.

This is no way to enjoy the other half of the sunshine!

The names of course have been changed to protect the innocent in recounting this true to life history of community association life.



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