

Alabama Court Finds that Insured's Claim is Barred by Late Notice

Property Coverage Update

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In *American Western Home Ins. Co. v. Reese*, 2011 U.S. Dist. LEXIS 122805 (October 20, 2011), the U.S. District Court for the Southern District of Alabama held that coverage for a Hurricane Katrina damage claim was barred by the insured's untimely notice.

American Western Home Insurance Company issued a commercial property policy to Crest Motel for the policy period January 13, 2005 to January 13, 2006. On August 29, 2005, the motel sustained damage as a result of high winds during Hurricane Katrina. Crest made a claim to American Western, and American Western paid Crest \$25,081 in November 2005. Over four years later, on October 7, 2009, Crest sent a proof of loss to American Western claiming \$274,463.38 in additional damages purportedly caused by the hurricane.

American Western filed a complaint for a declaratory judgment, contending that the supplemental claim was not covered due to the insured's late notice. The court agreed and granted American Western's motion for summary judgment.

The court reasoned that the policy's "Duties in the Event of Loss or Damage" provision required the insured to give "prompt notice of the loss or damage." In determining whether Crest complied with this provision, the court stated that, under Alabama law, "there are only two factors to be considered in determining the reasonableness of a delay in giving notice to an insurer: the *length* of the delay and the *reasons* for the delay." (Emphasis in original.) The court found that Crest had discovered the damage at issue at least two and half years before it provided notice of the supplemental claim, and that it had offered no excuse for that delay. As such, the court found that Crest's delay in submitting the supplemental claim was unreasonable as a matter of law.

The court also found that the loss would not be covered in any event because Crest failed to submit any documentation to support the claim, and it rejected Crest's argument that American Western waived its coverage defenses.

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