

Insurance Claims Lawyer  
J.P. Gonzalez-Sirgo Attends  
Miami-Dade Justice  
Association Luncheon where  
Governor Charlie Crist was  
the Keynote Speaker.

Governor Crist was the keynote speaker at the Miami-Dade Justice Association luncheon held on May 28, 2014. Governor Crist spoke about the importance of education and consumer rights, among other things. These are two very important issues facing Florida citizens.



J.P. with Governor Charlie Crist.



J.P. has built his entire career on protecting the rights of insurance policyholders, personal injury and wrongful death victims and fighting for the rights of Florida consumers and small businesses. Prior to attending law school, J.P. worked as a claims adjuster for a busy independent adjusting firm in Miami where he handled hundreds of claims. Before launching his own law practice in 1994, J.P. worked for a prominent insurance defense firm in Miami. He now uses the insight that he gained working for the insurance industry for the benefit of his clients. J.P. has recovered millions of dollars for victims of denied or underpaid insurance claims, victims of catastrophic personal injuries and wrongful death and on behalf of those that have been taken advantage of by Big Business and Big Insurance. In Miami-Dade County call J.P. at (305) 461-1095 or toll free at (866) 71-CLAIM or fill out the short online contact form at [www.YourAttorneys.com](http://www.YourAttorneys.com).



## Second District Rules Against Insurance Company for Sandbagging on Timing Requirement

Most individuals and businesses that pay extra premiums to insure against an otherwise uncovered peril presume their insurance carrier will cover such losses when a catastrophe occurs. At the very least, policyholders do not expect that their insurance company will sandbag its denial until \$1.8 million in extra expenses from the peril have been incurred. A recent case from the Florida Court of Appeals for the Second District, *Axis Surplus Insurance Company v. Caribbean Beach Club Association, Inc.*, NO. 2D13-1057 (Fla. 2d DCA June 27, 2014), provides an example of how this type of sandbagging strategy can backfire on the insurance carrier.

Caribbean purchased a property damage policy from Axis that covered fire damage, but expressly excluded the increased cost of

construction incurred because of enforcement of a law or ordinance by a public entity. A separate endorsement for Ordinance or Law Coverage up to \$2,500,000 was purchased for an additional premium amount. The provision provided:

b. With respect to the Increased Cost of Construction:

(1) We will not pay for the increased cost of construction:

(a) Until the property is actually repaired or replaced, at the same or another premises; and

(b) Unless the repairs or replacement are made as soon as possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

Caribbean and Axis initially cooperated when Caribbean's building was devastated in a fire. The insured had some concern that Lee County would enforce the "50 percent rule" embodied in its ordinances. The rule required a building to be brought into compliance with existing building codes if more than fifty percent of the building was damaged. This requirement would necessitate raising the entire building to comply with flood elevation requirements.

Nineteen months after the fire, Lee County notified Caribbean that the 50 percent rule was being enforced. The insured and carrier continued to cooperate during this time. Axis

indicated that the repairs, which included bringing the building up to code, would require an additional year. Axis retained a contractor who provided a \$2.8 million estimate for replacement. Axis was aware that Caribbean intended to replace the building and that the insured expected Axis to pay for the full cost, including the additional cost of bringing the building to code.

The repairs continued until 26 months following the fire when Axis suddenly notified Caribbean that it would not pay for additional repair costs because the construction was not completed within two years of the fire. With the exception of a general reservation of rights letter, the insurance carrier had not previously raised the two-year time limit clause.

The appeals court upheld summary judgment in favor of the insured because of a lack of prejudice to the insurance company from the delay and waiver of the time limit by the carrier. The court found that the condition was essentially a forfeiture requirement, which is viewed unfavorably. The court also noted that the failure to comply with the timing requirement was not the fault of the insured. Because the insurance company did not invoke the forfeiture clause earlier in the process, the court found the time limit was waived.

Both the insurance company and insured stipulated that the additional cost of repair because of the ordinance was \$1.8 million. In this case, the insured paid a higher premium for special coverage. This case demonstrates how insurance companies may attempt to sandbag policyholders.

*Don't quit on your insurance claim just because your insurance company quit on you!*

This informational bulletin is published by the Law Offices of J.P. Gonzalez-Sirgo, P.A. and is intended for friends of our Firm. It is for informational purposes only and no legal advice is intended. To be removed from our mailing list, please email [info@yourattorneys.com](mailto:info@yourattorneys.com).