Portfolio Media. Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Conn. Justices Won't Revive Insurer's Suit Against Adjuster

By **Jeff Sistrunk**

Law360 (April 16, 2019, 9:12 PM EDT) -- The Connecticut Supreme Court on Tuesday sunk Evanston Insurance Co.'s chances of reinstating a $1.25 million jury verdict in its suit accusing a claims adjuster of mishandling a Hurricane Wilma damage claim, agreeing with a federal court that the insurer can't skirt the applicable statute of limitations.

The case came to the Connecticut high court via a **certified question from the Second Circuit**, which sought guidance on Evanston's appeal of a federal district court order setting aside the verdict in its negligence case against adjuster William Kramer & Associates LLC, which dates back to October 2013.

The district court had found that Evanston's suit was time-barred under the relevant three-year statute of limitations, rejecting the jury's conclusion that the limitations period was delayed — or "tolled" — because Kramer still owed contractual obligations to Evanston even after it closed the claim file for a hurricane-damaged apartment complex called The Villas at Lauderhill in March 2007. In Tuesday's opinion, the Connecticut Supreme Court said the federal court made the right call, holding that Kramer didn't owe any continuing duties to Evanston after the file's closure.

"None of the defendant's actions after March 2007, reasonably could be considered further performance of any of the full adjustment services previously delineated and, thus, a further continuation of that fiduciary relationship," Justice Andrew McDonald wrote for the unanimous court. "The defendant closed its file on the Villas shortly after the plaintiff issued the final claim check, signifying that it had completed its performance of the adjustment services for which it had been hired."

The dispute concerns Kramer's work to adjust The Villas' claim for Hurricane Wilma damage under a property policy issued by Evanston.

According to court documents, Kramer repeatedly told Evanston there was no mortgage on the apartment complex. But as it turned out, there was a mortgage, and the bank that held it, Intervest National Bank, sued Evanston after The Villas didn't share the insurer's March 2007 payment on its hurricane claim. Evanston shelled out $1 million to resolve that suit, along with $250,000 in legal fees and expenses, court filings state.

Evanston then sued Kramer for negligence, and a Connecticut federal jury later found that the applicable three-year statute of limitations was tolled because Evanston and Kramer had a "continuing course of conduct" in their relationship, even after the insurer issued the claim check to The Villas. The jury awarded Evanston $1.25 million, according to court papers.

However, U.S. District Judge Michael P. Shea nixed that verdict after finding that the evidence was insufficient to support the jury's conclusions. Evanston appealed, and in May, the Second Circuit sought the Connecticut Supreme Court's input on whether the insurer and Kramer had an ongoing fiduciary relationship that extended beyond March 2007 and would justify tolling the three-year limitations period.

The Connecticut justices said no such ongoing relationship existed, noting that, after Evanston sent

the final claim check to The Villas, it had no contact at all with Kramer for about two years. After that point, the insurer's communications with the adjuster mostly concerned the Intervest litigation, not the services that Kramer had agreed to provide to Evanston, the state high court found.

"In addition to the fact that the defendant's post-2007 actions were not adjustment services, none of those actions bears the hallmarks of agency generally or of a fiduciary specifically," Justice McDonald wrote.

The Connecticut high court also rejected Evanston's assertion that Kramer had an ongoing "duty to warn or take corrective action" after 2007 to rectify its failure to identify Intervest's mortgage on The Villas. In order to prevail on that argument, Evanston would have to show that Kramer had "actual knowledge" of the mortgage's existence but still didn't notify the insurer, according to the opinion.

Unfortunately, Evanston undercut its stance on that issue because its counsel "plainly acknowledged" during the jury trial that the insurer "was not claiming that [Kramer's] failure to disclose the mortgage information" was intentional, the Connecticut justices said.

"There was no evidentiary basis to conclude that the defendant had actual knowledge of Intervest's mortgage interest," Justice McDonald wrote.

Counsel for Evanston and Kramer did not immediately respond to requests for comment late Tuesday.

Evanston is represented by Mary Massaron of Plunkett Cooney PC and Christopher L. Jefford of Bonner Kiernan Trebach & Crociata LLP.

Kramer is represented by Richard Simpson of Wiley Rein LLP and Christopher Kriesen of The Kalon Law Firm LLC.

The case is Evanston Insurance Co. v. William Kramer & Associates LLC, case number 16-2082, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Cara Salvatore. Editing by Katherine Rautenberg.
