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Liberty Mut. Ins. Group v. Cifuentes
Fla.App. 3 Dist.,2000.

District Court of Appeal of Florida,Third District.
LIBERTY MUTUAL INSURANCE GROUP, etc.,
Appellant,

v.

Alvaro CIFUENTES, et al., Appellees.


No. 3D99-1547.

May 17, 2000.

Insureds brought action against homeowners' insurer that denied liability coverage based on late notice of lawsuit. The Circuit Court, Dade County, [Alan Postman](#), J., entered summary judgment in favor of the insureds. Insurer appealed. The District Court of Appeal held that factual issue as to prejudice to the insurer from the insureds' delayed notice of suit precluded summary judgment.

Reversed and remanded.

West Headnotes

[1] Insurance 217  **3168**

[217](#) Insurance

[217XXVII](#) Claims and Settlement Practices

[217XXVII\(B\)](#) Claim Procedures

[217XXVII\(B\)2](#) Notice and Proof of Loss


[217k3166](#) Effect of Noncompliance with

Requirements

[217k3168](#) k. Prejudice to Insurer.

[Most Cited Cases](#)

A liability insurer should be relieved of all liability if the insurer has been prejudiced by the insured's failure to comply with the notice of lawsuit provision in the policy.

[2] Judgment 228  **181(23)**

[228](#) Judgment

[228V](#) On Motion or Summary Proceeding

[228k181](#) Grounds for Summary Judgment

[228k181\(15\)](#) Particular Cases

[228k181\(23\)](#) k. Insurance Cases. [Most](#)

[Cited Cases](#)

Genuine issue of material fact as to prejudice to a liability insurer from the insureds' delayed notice of suit precluded summary judgment.

Kubicki Draper and [Angela C. Flowers](#), Miami, for appellant.

Friedman & Friedman and [John S. Seligman](#), Coral Gables; [Lauri Waldman Ross](#), Miami, for appellees.

Before [JORGENSON](#), [LEVY](#), and [FLETCHER](#), JJ.
PER CURIAM.

[1] Liberty Mutual appeals an order of final summary judgment entered in favor of the homeowners. For the following reason, we reverse and remand for further proceedings. Under Florida law, an insurer should be relieved of all liability under an insurance policy if the insurer has been prejudiced by the insured's failure to comply with the notice of lawsuit provision in the policy. *See e.g., Tiedtke v. Fidelity & Cas. Co. of New York*, 222 So.2d 206 (Fla.1969); *Perez v. Public Serv. Mut. Ins. Co.*, 755 So.2d 168 (Fla. 3d DCA 2000); *Wolfson v. Insurance Co. of Florida*, 451 So.2d 1005 (Fla. 3d DCA 1984); *Alabama Farm Bureau Mut. Cas. Ins. Co. v. Harris*, 197 So.2d 567 (Fla. 3d DCA 1967).

[2] Accordingly, we reverse the order granting summary judgment and remand for further proceedings as there remains the issue of whether Liberty Mutual suffered prejudice for the delayed notice of suit.

REVERSED and REMANDED.

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760 So.2d 230, 25 Fla. L. Weekly D1174

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