



Alerts

Course of Practice May Determine an Insurance Agent's Authority to Issue a Binder/Evidence of Insurance - AND - Finding of Bad Faith May Preclude an Insurer From Seeking Indemnity From an Insurance Agent

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Professional Lines Alert

The Court of Appeals of California, Fourth District, recently considered whether a document entitled "Evidence of Property Insurance" (EOI) could be an enforceable binder of homeowner's insurance. *Chicago Title Insurance Company v. Pacific Specialty Insurance Company*, 188 Cal. App. 4th 401 (2010).

The subject homeowners contacted a mortgage broker to refinance their home. The lender required evidence of insurance. Chicago Title opened an escrow. The mortgage broker contacted AMZ Insurance Services (AMZ) to obtain the required insurance. AMZ prepared the EOI and sent it back to the mortgage broker with a premium invoice. The EOI identified Pacific Specialty Insurance Company (PSIC) as the insurer. The mortgage broker sent a copy of the EOI to Chicago Title, and the lender then funded the loan.

The EOI required that the premium be paid within 15 days of the date it was issued. The premium was not paid within the stated time. Thereafter, a fire burned down the home and killed one of the homeowners.

PSIC disclaimed coverage because the premium was not paid as required by the EOI. It also asserted that its producer agreement with AMZ only authorized AMZ to issue an EOI if the premium had been paid. In this case, Chicago Title had not paid the premium to PSIC even though a copy of the premium check was in the Chicago Title file. Chicago Title and the insureds disputed whether they were notified, prior to the loss, that the policy had been cancelled for failure to pay the premium.

After PSIC denied the claim, Chicago Title paid the claim and sued AMZ and PSIC. AMZ filed a cross-claim against PSIC and PSIC filed a cross-claim against AMZ.

The court determined that the EOI was a binder because it complied with all the requirements of California Insurance Code Section 382.5. The court noted the EOI did not state that a premium payment was required for the EOI to take

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effect. The parties then tried two issues to the jury: (1) Was the EOI/binder cancelled prior to the loss; and (2) did AMZ have actual or ostensible authority to issue the EOI/binder on behalf of PSIC.

AMZ demonstrated that PSIC had permitted AMZ to issue EOIs without prepayment and to use them as binders for escrow transactions. When the premium was paid through the escrow, PSIC would issue the policy retroactive to the date of the EOI.

The jury determined that the EOI was not cancelled before the fire; that AMZ had legal or ostensible authority to issue the binder; that PSIC breached the covenant of good faith and fair dealing by failing to pay the claim and by failing to properly investigate it; and that PSIC's actions caused Chicago Title to sue AMZ.

This opinion is significant for four reasons. First, it addresses the requirement that the party asserting on appeal that the trial court verdict was not supported by substantial evidence must present all record evidence to the appellate court. Failure to present all material evidence permits the appellate court to deem that that party waived any challenge based on insufficiency of the evidence.

Second, it summarizes the law of insurance binders. A binder is a temporary contract of insurance. California Insurance Code Section 382.5. It remains in effect for at least 30 days unless otherwise terminated. California Insurance Code Section 481.1. If cancelled, the binder terminates coverage 10 days after written notice to the insured is deposited in the mail.

A binder must identify the insurer, insured, agent issuing the EOI/binder, address of the insured property, effective date of coverage, and binder number. It need not recite all the terms of the policy because it is deemed to include all the usual terms of the type of policy being issued (in this case a homeowner's policy).

Third, the court considered the agent's authority to issue the binder. It was undisputed that the producer agreement required receipt of the premium before the binder could be issued. The evidence established that the standard insurance industry practice was to use EOI forms to bind coverage. The evidence was that PSIC had instructed and authorized AMZ to bind PSIC in escrow transactions by issuing EOIs before receipt of a signed application and the premium payment. AMZ followed this procedure without objection from PSIC 30 to 40 times. Thus, the court found actual agency. Chicago Title presented evidence that it was aware of this practice by AMZ and that PSIC had issued policies after escrow closed between 5 and 10 times. The court found that this supported a finding of ostensible agency.

Last, the opinion is important because the court determined that PSIC could not seek indemnity from AMZ. The producer agreement provided that AMZ was obligated to indemnify PSIC for the loss because AMZ breached the agreement. The court rejected the argument because AMZ was found to have been authorized to issue the EOI/binder. More significantly, the court held that the bad faith conduct of PSIC precluded a claim against AMZ. The court stated that the indemnity agreement provided indemnity only for passive negligence and not for the bad faith and intentional conduct of the insurer.

Practice Note

This opinion emphasizes that an insurer must fully investigate the facts of a claim before denying coverage. It also demonstrates that the parties to the producer agreement may only rely upon that agreement if they follow its terms. And the opinion holds that an insurer found liable for intentional/bad faith conduct may be precluded from seeing indemnity from an allegedly negligent insurance agent.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.