HINSHAW

Alerts

The California Court of Appeal Bars Assignee's Claim Against Broker Under the Superior Equities Doctrine and Refuses to Expand Broker's Duty to Procure Insurance

November 21, 2013
Lawyers for the Profession®

Summary

The assignee of an insured sought to expand the current duty of a broker to impose implied obligations to procure prior-competed-work coverage, even when not requested by the insured. Before reaching this issue, the Court of Appeal for the Fourth Appellate District, in an unpublished decision, determined that the superior equities doctrine barred the assignee's claim against the broker because the broker neither caused nor intended to indemnify for the loss at issue. The Court also declined to expand a broker's legal obligations to procure insurance and stated that it was the purview of the Legislature, not the courts, to change the law.

Background

The Insurance Policy

Beginning in 2000, a remodeling contractor ("Contractor"), hired a broker ("Broker") to procure "a basic liability policy." Contractor specifically asked for the "least expensive policy" with particular policy limits, but did not describe the type of coverage it wanted. After Broker procured the policy that contained, *inter alia*, an exclusion for prior completed work and Contractor's president had read the policy, Contractor did not request policies without these limitations. At no point did Contractor dispute that Broker had obtained the coverage it had requested or that Broker had misrepresented any coverage contained in the policy.

The Incident

In July 2008, a restaurant, which Contractors had performed and completed work in April 2004, suffered an explosion resulting in fire and substantial property damage. It was determined that Contractors' work caused the fire. The restaurant's insurer ("Insurer"), paid for the damage and soon thereafter sought recovery from Contractor. Contractor tendered Insurer's claim to its 2008 policy (current insurer) and its 2004 policy (construction-era insurer). Both of Contractors' insurers denied coverage — the 2004 policy based on the manifestation endorsement and the 2008 insurer based upon the prior-

Service Areas

Professional Liability

completed-work-exclusion. Contractor admitted that it had no insurance coverage for this claim.

The Lawsuits

Insurer then sued Contractor for the damage and obtained a default judgment when Contractor failed to answer. Before filing for bankruptcy protection, Contractor assigned to Insurer any claims Contractor had against Broker.

Insurer, standing in the shoes of Contractor, then filed suit against Brokers alleging that Brokers failed to procure adequate insurance coverage. Brokers moved for summary judgment on the grounds: (1) it had no duty to provide Contractor with different or additional coverage than requested; (2) this claim was barred by the superior equities doctrine; (3) the claim was barred by the statute of limitations; and (4) Contractor suffered no damages because it filed bankruptcy. The trial court granted the motion finding that Broker did not breach its duty to Contractor to provide different or additional coverage, and did not rule on the other grounds.

The Appeal

Insurer appealed principally arguing that the Court should impose a heightened obligation on brokers to procure policies that contained coverage that the broker should have known an insured would want, to wit, prior-completed-work coverage. The Court, however, decided the appeal based on the superior equities doctrine, which was not addressed by the trial court, and secondarily opined that Broker owed no duty to Contractor to procure prior-completed-work coverage.

Under California law, the superior equities doctrine applies to all subrogation cases. *Meyers v. Bank of America Nat'l Trust & Savings Ass'n* (1938) 11 Cal.2d 92, 102-103; *State Farm General Ins. Co. v. Wells Fargo Bank, N.A.* (2006) 143 Cal. App.4th 1098, 1111. Under this doctrine, an insurer can enforce its subrogation rights against the party that caused the loss only if it has equities superior to those of the wrongdoer. *State Farm*, at 1118. California courts have consistently held that the superior equities doctrine bars claims by insurers against brokers for alleged failures to properly procure insurance coverage. *See Dobbas v. Vitas* (2011) 191 Cal.App.4th 1442, 1454 (an insurer is not in an equitably superior position to a third party who agreed to procure insurance for a loss, but did not cause the loss or agree to indemnify for the loss); *Mid-Century Ins. Co. v. Hutsel* (1970) 10 Cal.App.3d 1065, 1070; *Patent Scaffolding Co. v. William Simpson Constr. Co.* (1967) 256 Cal.App.2d 506, 512.

The evidence presented did not demonstrate that Broker caused the restaurant fire or that Broker agreed to indemnify Contractor for the restaurant fire. Accordingly, the Court determined that Insurer, as assignee, could not establish that its position was equitably superior to Broker's position and its claim was barred.

The Court also affirmed its earlier decisions that defined the limited scope of a broker's duty to his or her clients. A broker must "use reasonable care, diligence, and judgment in *procuring* the insurance requested by an insured." *Pacific Rim Mech. Contr., Inc. v. Aon Risk Ins. Servs. West, Inc.* (2012) 203 Cal.App.4th 1278, 1283. The Court carefully weighed Insurer's policy arguments to impose additional implied contractual duties on a broker, but determined that only an insurer, not the insured, would benefit from such a change in the law under the facts of this case. Accordingly, the Court stated that only the Legislature, not the courts, should impose such an additional burden on a broker.

Impact of this Case

Because this case is not certified for publication in the official reports, it cannot be cited as precedent in California. This case is important, however, because it provides insight into the continuing challenges raised to expand the limited duties owed by a broker to an insured in California. The case also highlights that fact that the Court of Appeal may adjudicate the appeal on a ground not addressed at the trial court level.

San Diego Assemblers, Inc. v. Work Comp for Less Insurance Services, Inc., No. D062406, 2013 WL 5788410, 4th Appellate Dist., filed October 4, 2013.

For more information, please contact your regular Hinshaw attorney.