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Insurance Brokerage Company's Employee Was Insurer's Agent for Purposes of Accepting Notice of Claim

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First Chicago Insurance Company v. Molda, No. 1-14-0548 (Ill. App. 1st Dist. June 26, 2015)

Defendant Molda was a salesman for the insured, Metrolift, when he had a collision while driving a noncompany-owned automobile on August 17, 2005 with plaintiff Wilson. Molda had his own automobile insurance, and proceeded to give notice of the accident to both his insurer and Metrolift.

Associated Specialty (Associated) had acted as Metrolift's insurance broker. Harrison — the Metrolift treasurer who had responsibility for insurance matters — would contact Associated broker Baskiewicz if there was an accident that involved a policy Metrolift had procured through Associated to discuss what he knew about the accident. Harrison then would then forward accident and police reports and statements to Baskiewicz. If Harrison and Baskiewicz jointly determined that a claim was going to evolve, they would notify the carrier.

When Harrison received notice of Molda's accident in 2005, he called and informed Baskiewicz that he believed Molda had his own coverage and had not been driving a Metrolift vehicle at the time of the accident. They jointly decided to wait and see whether a lawsuit was going to be filed against Metrolift before giving notice to the carrier First Chicago Insurance. Harrison believed that he was following the policy's requirements by letting the broker know what was going on. Associated was affiliated with First Chicago, which paid Associated commissions based on its profitability.

Molda was served with a lawsuit brought by Wilson on October 11, 2007. He forwarded the papers to his own carrier but had no communication with First Chicago. Harrison received notice of the lawsuit and prepared a letter in March 2008 giving notice to First Chicago, but he provided a draft to Baskiewicz for comment before the letter was sent.

First Chicago filed a declaratory judgment action seeking a declaration that it had no duty to defend Molda. First Chicago contended that it first received notice of Molda's accident and Wilson's lawsuit on March 26, 2008, when it received the notice from Associated. The policy issued by First Chicago provided contact information for Associated only, and expressly referred to Associated as its agent. The policy notice provision stated that the insured must

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give prompt notice of an accident or loss to the carrier or the agent. Gettemans, First Chicago's president, testified in his deposition that the carrier encouraged people to report claims directly to First Chicago, but that if they felt more comfortable reporting to their agent, they were encouraged to do so. First Chicago claimed that Metrolift and Molda breached the policy by failing to give prompt notice of the accident, and thus that it owed no duty to defend or indemnify in connection with the Wilson lawsuit.

The trial court granted summary judgment in favor of First Chicago, and the appellate court reversed and remanded. On remand, the trial court found that First Chicago owed a duty to defend Molda. On the second appeal, the appellate court affirmed First Chicago's duty to defend based on Associated's receipt of notice from Harrison of Metrolift.

Question Before the Court

Whether the broker was acting as the carrier's apparent agent for purposes of accepting notice of a claim on its behalf from the insured?

Yes. The court recited the general rule in Illinois that an insurance broker is generally considered to be the agent of the insured, and not the insurance company, unless the agent is a general agent of the insurance company. However, the court held that there were situations in which an insurance broker can act as the insurance company's agent, or even as the agent of both the insured and the insurance company. Even if the broker does not have actual authority to act as the insurer's agent for notice, it may have apparent authority to do so. Apparent authority of an insurance broker to act as the insurance company's agent for notice can be established through a course of dealings between the broker and the insurance company that would lead the insured to believe that the broker had authority to perform the acts in question. The insurer is therefore estopped to deny the broker's authority. Acquiescence in the insurance broker's conduct by the insurance company under prior circumstances is sufficient to establish the broker's apparent authority.

The court found that here the insurance policy itself indicated that notice could be given to the carrier or Associated as its authorized representative. The policy's declarations page listed Associated as agent and gave only contact information for Associated. Gettemans testified that First Chicago actually encouraged its insureds to report claims to their agents. Harrison's testimony that he would only call Baskiewicz to discuss potential claims, and would rely on Baskiewicz in making the decision of whether they were going to notify the carrier established a course of dealings. The court concluded that this all pointed to a situation in which Associated, the insurance broker, acted as the agent of both the insured and the carrier for purposes of notice.

What the Court's Decision Means for Practitioners

Normally, an insurance broker is the insured's agent. But the court in this case easily found that the evidence supported a ruling that Associated was both First Chicago's agent as well as the insured's agent for purposes of accepting notice. The testimony on actual discussions and exchanges of information between the insured's treasurer, Harrison, and the broker Baskiewcz on whether they should wait to give notice of a particular claim established a course of dealing that gave rise to apparent agency and gave the court the basis to apply the dual agency exception.

For more information, please contact your regular Hinshaw attorney.

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