

Alerts

Case Reminds Insurance Agents to Review Process of Receiving Approval from Insureds Before Submitting Applications to Carriers

May 24, 2016

Lawyers for the Profession®

Schmidt v. Indiana Insurance Co., No. 22S01-1507-PL-412, Supreme Court of Indiana, December 2, 2015

Plaintiff was the owner of a house in which he allowed his cousin to live from 2007 to 2009. When the cousin moved out, he abandoned animals in the house. The County Health Department and Animal Control investigated and found the house covered in feces, fleas and garbage and removed two emaciated dogs and one dead dog. The Health Department condemned the property and declared it unfit for human habitation.

Plaintiff began repairs on the home that required removal of debris, dry wall, urine-soaked carpeting and subflooring. In April 2010, Plaintiff contacted Defendant insurance agent to obtain liability insurance on the property. The application submitted to the carrier for a "dwelling/fire policy" failed to disclose that the property was vacant, had been condemned and was under renovation. Plaintiff claimed he had provided this information to the agent, but the agent testified that he had reviewed the contents of the application with the Plaintiff who then signed it. In June 2010, the property was destroyed by fire. The carrier denied coverage, rescinded the policy because of material misrepresentations about the property, and refunded all premiums paid.

Plaintiff brought an action against the insurance agent and the carrier, alleging that the agents made false representations as to the occupancy status of the house on the application submitted to the carrier. Plaintiff also alleged that the agents were guilty of forgery, deception, insurance fraud and were liable under the Indiana Crime Victims Relief Act. He sought reinstatement of the policy, a declaration of coverage and compensatory and punitive damages.

The insurance agents and the carrier moved for summary judgment. The Trial Court granted both motions and the Plaintiff appealed. The Indiana Court of Appeals reversed the grant of summary judgment, on the questions of whether Plaintiff told the agent about the condition of the property and whether someone forged Plaintiff's signature on the application.

Question Before the Court

Service Areas

Professional Liability



Is the claim that the insurance agents failed to accurately report information on the condition of the property moot because no coverage policy would have been issued anyway?

Yes. The Court held that in order to succeed on his claim for negligence against the insurance agent, Plaintiff needed to demonstrate an injury caused by a breach of duty. The Court held that the Plaintiff suffered no damage because, even if the insurance application had fully disclosed the accurate condition and usage of the property, no dwelling/fire policy would have been issued on property that was condemned, uninhabitable, without utilities, vacant for over a year, and undergoing renovation. Since the agents had met their burden of demonstrating an absence of any damages caused by the breach of duty, the burden shifted to the Plaintiff to come forward with contrary evidence. The Plaintiff failed to show that, even if the insurance agent had provided the carrier with truthful and complete information, the property would have qualified for dwelling/fire insurance issued by the carrier or any other insurance company.

The Court affirmed the reversal of summary judgment for the agents on the issue of failure to procure appropriate insurance, finding that the agents neglected to explore other types of insurance coverage that could have been obtained and issued.

What the Court's Decision Means for You as a Practitioner

This case called to attention the process by which the agent prepared the policy application and received the plaintiff's approval before submitting it to the carrier. Plaintiff alleged conveniently that his signature on the application containing the false information was forged. Fortunately, the Court found here that the agents would not have wasted their time submitting a false application for coverage on a condemned house. The lesson here is that insurance brokers and agents should review their internal procedures on preparation and submittal of applications to the insureds for their review before submission to the carrier.

For more information, please contact your regular [Hinshaw attorney](#).

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.