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Insurance Company Had No Duty to Notify Loss Payee of Policy's Expiration or Policyholder's Failure to Renew

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on them by other motorists.

Background

Clifford and Elizabeth Henry ("the Henrys") held a Transamerica Insurance Co. ("Transamerica") automobile insurance policy. This policy contained a clause which excluded liability coverage for physical injury to any person related to the insured by blood, marriage, or adoption, if that person lived with the insured at the time of the loss.

Amy Anderson ("Anderson") drove the Henrys' automobile with permission from the Henrys. The Transamerica policy covered the automobile, in which the Henrys' son, Michael, was a passenger. The Henrys' car collided with a truck; Michael was seriously injured in the collision. The Henrys sued the owner of the truck, the operator of the truck, and Anderson.

The court dismissed Anderson's insurer from the case after it paid Michael the policy limit under Anderson's policy. Anderson then claimed coverage under the Henrys' policy and asked Transamerica to defend her in the Henrys' suit and to pay any settlement or judgment resulting from the suit. Transamerica claimed that it was not required to provide liability coverage to Anderson for Michael's injuries because of the applicability of the household exclusion clause. Anderson responded that the household exclusion clause was void as against the Indiana public policy of guaranteeing compensation to all accident victims, according to § 9-1-4-3.5. Ind. Code § 9-1-4-3.5. (West Supp. 1990).

Procedural History

Transamerica filed an action for declaratory judgment in the United States District Court for the Northern District of Indiana, requesting a determination of whether it was required to defend or to indemnify Anderson on the Henrys' claim. The district court decided, as a matter of law, that Transamerica was not required to provide liability insurance to Anderson for Michael's injuries and granted summary judgment for Transamerica. Anderson appealed to the Seventh Circuit which deferred judgment to the Indiana Supreme Court because no clear controlling precedent resolved the case. The court of appeals refused to predict how the Indiana courts would decide the issue and instead certified two questions to the Supreme Court of Indiana: (1) whether Indiana was a compulsory insurance state and therefore endorsed a policy of guaranteeing compensation to all automobile accident victims, and (2) whether the household exclusion clause was against the public policy of Indiana when applied to preclude coverage for injuries similar to those in this case.

Supreme Court of Indiana Decision

Prior to the enactment of § 9-1-4-3.5, Ind. Code § 9-1-4-3.5 (West Supp. 1990), Indiana was not a compulsory insurance state; Indiana required a driver to prove financial responsibility only after the driver's first accident. The prior statute provided that a driver who had passed the "one free accident" threshold could prove financial responsibility through bond, deposit of funds or securities, and self-insurance. The adoption of § 9-1-4-3.5 changed Indiana law by requiring proof of financial responsibility before a car could be registered. The new statute also required that such financial responsibility be maintained throughout the operation of the car. Therefore, § 9-1-4-3.5 abolished the "one free accident" scheme.

The Indiana Supreme Court characterized Indiana as a "compulsory financial responsibility" state, but it concluded that the enactment of § 9-1-4-3.5 did not evince an intent to guarantee compensation to all automobile accident victims. Instead, the court found that the new statute simply reiterated the state policy of facilitating recovery for injuries sustained by individuals other than those defined as "insureds" under the insurance policy. Indiana public policy favored protection of automobile drivers and passengers from injuries inflicted on them by others. This policy was similarly applicable under the previous statute in that drivers were protected from damages inflicted by another person's second accident. Thus, the court concluded that it was never Indiana policy to protect insureds from themselves. The court held that although Indiana was a compulsory insurance state, the state's public policy did not support compensation for all victims of automobile accidents.

With respect to the second certified question, the court found that since 1977, the Indiana courts had held that a household exclusion clause in an automobile insurance policy did not conflict with the public policy of Indiana. In support of its position, the court noted that the legislature had taken no action to nullify the household exclusion clause in insurance policies. The recent enactment of § 9-1-4-3.5 did not interfere with the agreement of the legislature and the courts on this issue. Section § 9-1-4-3.5 also did not change the prior policy of protecting motorists from drivers other than themselves.

Mira Djordjic

Insurance Company Had No Duty to Notify Loss Payee of Policy's Expiration or Policyholder's Failure to Renew

In ***First National Bank of Sioux City v. Watts,*** 462 N.W.2d 922 (Iowa 1990), the Supreme Court of Iowa held that an insurer of an automobile was under no duty to notify a loss payee of the automatic termination of the policy or of the insured's failure to renew the policy. Moreover, the court concluded that the insured's failure to renew the policy was not an act or neglect of the owner covered by the loss payable clause.

Background

Jerome E. Watts ("Watts") purchased a 1987 Pontiac from Bob Tagatz Pontiac, Inc. ("Tagatz") in Sioux City, Iowa. Watts and Tagatz entered into a retail sales installment contract and security agreement. Tagatz then assigned

(continued on page 106)

Failure to Renew

(continued from page 105)

the agreement to the First National Bank of Sioux City ("First National").

Subsequently, Watts obtained automobile insurance from Farm and City Insurance Company ("Farm and City"). The policy was effective from October 30, 1986 to January 30, 1987. The policy could be renewed for an additional year, upon payment of the annual premium on or before January 30, 1987.

Watts listed First National as loss payee under the loss payable clause. In pertinent part, the loss payable clause provided that payment for a covered loss be made to the loss payee. In addition, any act or neglect of the policyholder would not invalidate the loss payee's interest. Finally, the clause required Farm and City to notify the loss payee of the policy's cancellation ten days prior to the effective cancellation date. As loss payee, First National received a copy of the declaration page which indicated the policy's January 30, 1987 expiration date.

On January 22, 1987, Farm and City sent Watts a notice of expiration. The notice informed Watts of the policy's January 30, 1987 expiration date and indicated that there was no grace period. Watts failed to make the renewal payment, and the policy terminated. Two days later, on February 1, 1987, the vehicle was destroyed in a collision.

Pursuant to the loss payable clause, First National wrote to Farm and City, seeking recovery of $9,700, the outstanding amount due under the installment contract. Farm and City refused to pay First National because the policy had expired.

In response to Farm and City's denial of coverage, First National contended that it had an insurable interest in the vehicle. As a third party beneficiary, First National claimed that Farm and City was obligated to notify First National of the policy's expiration.

Farm and City reiterated that it had not cancelled the policy but that the policy had expired. Farm and City stated that, under the loss payable clause, it had no duty to notify First National unless the policy was cancelled. Also, Farm and City noted that Iowa law did not require an insurer to notify an insured when a policy expired on a fixed date. Additionally, Iowa law required insurers to maintain only liability coverage, not collision coverage, for ten days after a policy expired.

In response to Farm and City's denial of coverage, First National filed a declaratory judgment action against Farm and City. First National claimed that it was a third party beneficiary under the loss payable clause. Second, First National argued that it was entitled to notice of the policy's expiration and Watts's failure to pay the renewal premium.

District Court

The district court held that Farm and City had a duty to notify First National of the policy's expiration. The court reasoned that while an insurer need not notify an insured of a policy's expiration, First National was not an insured, but rather a loss payee.

Next, the court examined the loss payable clause which provided that an act or omission of the owner would not affect the loss payee's rights under the policy. The court found that the failure of Watts to pay the renewal premium was an act or omission contemplated by the loss payable clause. Therefore, First National's interest remained protected in spite of Watts's failure to pay the renewal premium.

Lastly, the court noted that the loss payable clause required Farm and City to give First National notice of cancellation. The policy continued to cover First National, as Farm and City failed to give the required notice.

The court entered a judgment in favor of First National for $5,873.79, an amount stipulated to between the parties. Farm and City appealed the decision.

Iowa Supreme Court

On appeal, the Iowa Supreme Court reversed the lower court's decision. Farm and City argued that Watts's policy was for a specified period, and therefore, Farm and City had no duty to notify First National of the policy's expiration. First National maintained that Farm and City was required to notify the bank of the policy's expiration, emphasizing its special status as a lienholder.

The court rejected First National's argument. The court explained that, under Iowa law, an insurer is not required to notify an insured of a policy's expiration, but only of a policy's cancellation. If the policy language included a definite policy period and the policy terminated at the end of that period, then the policy expired. Because Watts's policy ended on a specified date, the court found that the policy had expired; Farm and City, therefore, did not have to give any notice to First National.

In addition, the court held that First National's status as a lienholder under the loss payable clause did not expand Farm and City's duty to notify First National in the event of the policy's expiration. In this case, the loss payable clause required notice to the lienholder only in the event that Farm and City decided to cancel the policy; the clause was silent with respect to notification in the event of the expiration of the policy.

The supreme court rejected the district court's finding that First National's interest in the policy continued because Watts's failure to renew the policy constituted an act or omission under the loss payable clause. The high court agreed that the loss payable clause operated as a separate contract between the insurer and the lienholder. However, the court explained that the reference to "any act or neglect of the owner" under the loss payable clause referred to a breach of a policy condition by the policyholder. Because the policy contained no condition requiring Watts to renew the policy, his failure to pay a renewal premium did not constitute a breach of a policy condition. Therefore, the court found this portion of the loss payable clause inapplicable.

The supreme court highlighted the district court's misunderstanding of the terms 'cancellation' and

"termination." The court explained that in insurance law, cancellation referred to a termination of a policy prior to its expiration. In contrast, termination referred to the expiration of the policy due to lapse of the policy period. Since Watts's policy terminated due to the lapse of the policy period, the court determined that notice under the loss payable clause was not required.

Although Farm and City offered to renew Watts's policy, the court explained that the offer did not affect its decision. By its terms, the policy automatically terminated upon Watts's failure to pay the renewal premium. Indeed, the termination signaled a rejection of the offer.

Finally, the supreme court rejected First National's public policy argument that an insurer had an inherent duty to give notice of the expiration to a loss payee. The court recognized that no known authority required an insurance company to continue to contract with an insured after the policy expired. Also, the court emphasized that because First National had a copy of the declaration page, it was fully aware of the expiration date. The court concluded that in the absence of an insurance policy or statutory provision stating otherwise, an insurer had no duty to notify a lienholder of a policyholder's failure to renew or of the expiration of the policy period.

The court reversed and remanded the case, directing that judgment be entered in favor of Farm and City.

Elizabeth A. Barnes

Iowa Supreme Court Denied Right of First Refusal To Agricultural Property Mortgagors

In *Cole v. First Bank of Greene,* 463 N.W.2d 59 (Iowa 1990), the Iowa Supreme Court held that a bank was not required to offer the prior owners of foreclosed agricultural property the opportunity to repurchase the property. In addition, the court held that the prior owners failed to establish the existence of an oral contract with the bank which would have permitted the prior owners to purchase a portion of the foreclosed property at a reduced price.

Background

Dean and Marilyn Cole (the "Coles") borrowed money from the First Bank of Greene ("First Bank") and used their eighty-three acre farm as collateral. When the Coles failed to repay the loans, First Bank obtained a decree of foreclosure on the Coles' farm in November 1986. Pursuant to an order by the district court, the county sheriff placed a levy on the property. In December 1986, the Coles filed a designation of homestead, which exempted their residence and up to forty acres of their property from creditors' liens.

In January 1987, First Bank bid $80,000 for the property at a sheriff's sale. First Bank received a certificate of sheriff's sale which entitled it to receive within one year either the balance of the debt owed by the Coles or the title to their farm. First Bank immediately assigned the certificate to Leon D. Steere and C. Jolene Steere (the "Steeres") for $70,000; First Bank did not first offer the Coles the opportunity to repurchase the property on the same terms.

Seven months later, the Coles filed an application in the foreclosure action, asking the court to determine the fair market value of the homestead property. The court did not act on this application.

The Coles filed suit in 1988 against First Bank and the Steeres. First, the Coles claimed that the district court's failure to determine the fair market value of the homestead in the foreclosure action denied them their right to redeem their property. Iowa Code § 654.16 (1987). Second, the Coles alleged that First Bank denied them their right of first refusal by failing to offer them the sheriff's certificate at the same price that the Steeres paid. Iowa Code § 524.910(2) (1987). Finally, the Coles contended that First Bank breached an oral agreement it had made in which it agreed to resell the Coles six acres of their property if First Bank was the highest bidder at the foreclosure sale.

On all three issues, the Iowa district court decided in favor of First Bank. The Coles appealed.

Supreme Court's Decision

Right to Fair Market Valuation of Homestead

On appeal, the Coles argued that the district court erred in refusing to determine the fair market value of their homestead according to § 654.16. Iowa Code § 654.16 (1987). In 1986, the Iowa Legislature adopted § 654.16 which provided that a mortgagor could designate a portion of the foreclosed land as a homestead. The statute also stated that a court would determine the fair market value of the homestead, in the event it was sold with nonhomestead property; the mortgagor was permitted to redeem the homestead separately within two years of the foreclosure sale. In 1987, the Iowa Legislature amended § 654.16, revising the valuation procedures for agricultural homesteads subject to redemption.

The court rejected the Coles' argument. The court noted that the Coles had conceded in their post-trial brief that § 654.16 did not apply to them due to its enactment date. In this case, the sheriff's sale took place prior to the effective date of the 1987 revisions to § 654.16. The court held that through their earlier concession regarding § 654.16, the Coles waived their right to raise the issue on appeal.

Right of First Refusal

Second, the Coles asserted that under § 524.910(2), Iowa Code § 524.910(2) (1987), First Bank was required first to offer the foreclosed property to them on the same terms as proposed to the Steeres. Section 524.910(2) required a state bank to dispose of real property purchased in a foreclosure sale within five years after the title vested in the bank. The statute also provided that if the real property was agricultural land, prior to selling the land to another person, the bank must offer the prior owner the opportunity to

(continued on page 108)