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PROFESSIONAL LIABILITY BLOG

Eighth Circuit Holds Under Missouri Law Broker Cannot be Liable for Insured's Non-Compliance With a Policy

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The 8th Circuit affirmed summary judgment in favor of an insurance broker on claims of negligent procurement and breach of contract brought by a putative additional insured under a property policy. Appellant owned commercial property on which non-party named insured operated a bar. Appellant entered into a contract with the named insured for the sale of property and pursuant to the contract the named insured was to obtain, at its own expense, fire insurance in the amount of the purchase price for the property.

The named insured approached the Respondent insurance broker and requested that Appellant property owner be listed as a named insured, loss payee, additional insured, and mortgagee on the insurance policy. The policy was procured with an endorsement that required the insured to maintain a working automatic sprinkler system on the property. The endorsement excluded all coverage for fire loss if the sprinkler was inoperative. However, the policy as issued did not list the Appellant property owner as a named insured, loss payee, additional insured, and mortgagee. The broker did not inform either the named insured or the Appellant that the Appellant was not listed as an insured under the policy. A year later, a fire destroyed the property and at the time of the fire, the sprinkler system was inoperative.

Appellant property owner submitted a proof of loss claiming to have an interest in the property as a lender. The insurer filed a Declaratory Judgment action claiming there was no coverage under the policy for the Appellant because the Appellant was not entitled to recover as a mortgagee because sellers on a contract for deed are not mortgagees under Missouri law. The court agreed and granted summary judgment in favor of the insurer.

Appellant had also filed a negligent procurement and breach of contract claim against the Respondent broker which it continued to pursue after it lost summary judgment to the insurer. The district court granted summary judgment in favor of the Respondent broker finding that Appellant was collaterally estopped from relitigating the issues decided in its lawsuit with the insurer and that Appellant could not prove that the broker caused any damages because the alleged damages were caused by the exclusion from coverage under the endorsement relating to the inoperative sprinkler system. The district court also found it was a legal question in regard to whether the Appellant could be listed as a mortgagee given the complex legal issues under Missouri law and found the broker did not have a duty to examine those issues or find out whether Appellant was a mortgagee under Missouri law.

The 8th Circuit affirmed the summary judgment and focused the opinion on the fact that Missouri applies a "but for" test for causation and under Appellant's theory of liability it could not prove damages against the Respondent broker. The 8th Circuit found even if the broker had procured the policy in precisely the manner requested, there still would not have been any coverage due to the exclusion involving the inoperative sprinkler system. Moreover, the 8th Circuit found that the broker did not lull the Appellant into believing it was an insured under the policy and that no further actions were necessary. It distinguished other cases because in this case, non-compliance with the policy was the issue and broker liability cannot be premised on non-compliance with the policy. Therefore, it was the exclusion relating to non-operative sprinkler system and not the broker's failure to notify the Appellant it was not listed as an insured which barred recovery.

The 8th Circuit opinion supports the notion that even if the broker makes an error or omission in issuing a policy, the putative insured must still prove compliance with the policy had it been issued correctly. Depending upon the facts of the case, the 8th Circuit's opinion provides good support for dispositive motions in broker liability cases.

Case Citation: *Blvd. RE Holdings, LLC v. Mixon Ins. Agency, Inc.*, 2023 U.S. App. LEXIS 18404