

Adequate Notice of Reduction in Coverage Required at Renewal

April 2014

Applying Oklahoma law, the United States District Court for the Western District of Oklahoma has held that an insurer failed to give adequate notice of a policy renewal that resulted in a reduction in coverage. *Cactus Drilling Co., LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 2014 WL 547180 (W.D. Okla. Feb. 10, 2014).

The policyholder had purchased a Commercial Umbrella Liability Policy for the period from 2006 to 2007. The policy was subsequently renewed for the periods from 2007-08, 2008-09, and 2009-10. All four policies provided coverage for "bodily injury" that occurs during the "policy period" as a result of an "occurrence" but excluded coverage for "bodily injury . . . expected or intended" from the standpoint of the insured. However, the 2006-07 policy contained an endorsement that excluded coverage for "[b]odily injury resulting from an act which is determined to have been committed by you with the belief that an injury is substantially certain to occur," in five designated states, not including Oklahoma. The three subsequent policies issued did not include this endorsement.

In 2009, two of the policyholder's employees were killed during the course and scope of their employment. The deceaseds' estates initiated a suit against the policyholder. The insurer denied coverage for the suit on the grounds that the policy did not cover the incident. The policyholder sued the insurer and moved for summary judgment that the 2006-07 "substantial certainty" endorsement should be incorporated into the 2009-10 policy. The insurer argued that under Oklahoma law, the "occurrence" and "intended or expected" language in the "bodily injury" exclusion excluded "substantial certainty" torts as a matter of law and that the endorsement did not change the analysis. Therefore, the insurer contended that the elimination of the endorsement in its subsequent policies was not a reduction in coverage for which it was required to provide notice.

The court held that the 2006-07 "substantial certainty" endorsement should be incorporated into the 2009-10 policy. The court found that the policy was ambiguous and, construing that ambiguity in favor of coverage, the insured had a reasonable expectation that such claims would be covered. Because the insured had a reasonable expectation of coverage, the court found that the elimination of the endorsement reduced the insured's coverage, and the insurer was required to give notice when it issued subsequent policies that did not contain the endorsement. The court found that two letters issued by the insurer notifying the insured that the 2006-07 policy "will not be renewed, and replacement coverage 'may' be issued, which 'may' include

reduction in coverage” did not provide sufficient notice because the 2007-08 policy clearly stated that it is a renewal of the 2006-07 policy, thereby rendering the letters inapplicable. Additionally, the court found that a draft letter provided by the insurer listing the amended provisions with instructions to review the policy for a complete description of coverage was insufficient under the facts to give “clear and conspicuous” notice of reduction in coverage.