
Agents & Brokers/Negligent Misrepresentation

Mississippi Supreme Court Rejects Claim against Agent and Insurer Based on Agent's Alleged Misrepresentation That Homeowner's Policy Covered All Hurricane Damage, Whether from Wind or Water, But Allows Negligent Misrepresentation against Agent Based on Representation about Need for Coverage

Policyholder's "Duty to Read" Policy Precluded Justifiable Reliance on Agent's Representations Regarding Policy's Coverage

Mladineo v. Schmidt, ___ So.3d ___, 2010 WL 4242620 (Miss. Oct. 28, 2010)

Case at a Glance

Under Mississippi law, a policyholder's duty to read his/her insurance precludes a claim for flood damage against either the insurer or the agent who sold the policy based on the agent's misrepresentation that the policy, which contained a flood exclusion, would cover all hurricane-related damage, whether caused by wind or flood. However, policyholders may sue the agent (but not the insurer) for negligent misrepresentations unrelated to the contents of the policy, such as the agent's representation that flood insurance was unnecessary because the policyholders' home was not in a flood zone.

Summary of Decision

The policyholders (P) bought vacation property next to the Gulf in Mississippi. P made inquiries about property insurance and obtained and paid for insurance coverage which became effective at the time of closing. Before closing, P discussed their needs for the new property insurance with an insurance intermediary (D2), who is a party to this lawsuit. P requested "full coverage" for all the structures on the vacation property. P alleged that D2

had informed them that they "would need to purchase a 'hurricane policy' in order to obtain the requested policy." Allegedly, D2 told P that they did not need a flood policy, for the following reasons. First, the property was not in the flood zone. Second, the loss payee did not require it for this sort of property. Third, and most important, the property was covered for all "wind and water damage from a named storm through the 'hurricane policy.'" P alleged that they therefore purchased what they believed was a "hurricane" policy from Nationwide Property & Casualty Company (D1).

P received the policy approximately 6 weeks later. The insuring agreement did not cover flood. In fact, the exclusionary section said at least 3 times that the policy does not cover flood. D2 admitted that it did not disclose to P that the "hurricane policy" contained a flood exclusion.

P had no further conversations with D2. P stowed it away without reading it. A bit more than 3 months later Hurricane Katrina struck. The residence was "severely damaged." There was flooding, for which D1 denied coverage. P subsequently learned that a portion of their property was in a flood zone.

P sued the "Ds" for negligence, negligent misrepresentation and tortious breach of contract. After considerable discovery, both D1 and D2 moved for summary judgments, and P opposed those motions. The "Ds" based their motions on the principle that P had a duty to read the policy, rendering P's reliance on D2's representations per se unreasonable. Agreeing, the trial court granted the "Ds" motions for summary judgment on all claims.

The Mississippi Supreme Court affirmed in part and reversed in part. The court explained that P, having possession of the policy for four months before Katrina hit, had enough time to have read the policy. Therefore, P was imputed with knowledge of the policy's contents and P could not reasonably rely on D2's representation regarding the policy's coverage. P's inability to establish justifiable reliance precluded a cause of action against the agent based on these representations or against the insurer based on the agent's apparent authority. Moreover, as a general rule, an insurance intermediary does not have a duty to advise about coverage needs. Nonetheless, if D2 offered advice, he had a duty to exercise reasonable care. Accordingly, there was a question of fact regarding whether D2 breached his duty of care

by allegedly stating the property was not in a flood zone and counseling against flood insurance. Further, there was a question of fact regarding whether any such breach proximately caused any damages such as uninsured claims resulting from a lack of flood coverage. Consequently, summary judgment was improperly granted to defendants on the negligence issue.

Comment

The *Mladineo* decision establishes that there is for prospective insureds and insureds themselves prior to any event upon which a claim is predicated a duty to read the policy. Reading the policy is not the same as understanding it. In the realm of the established law, reading something does not imply that one understand what one has read.

Now, why should something which is not true in general outside the law, be true in an important, but common sensical, area of the law, particularly when it is so injurious to those which are usually the economic, educational, and experiential lesser? Given this fact, how can one help but be pried toward the view that the "Rule of Requiring" that insured having read their policies. When I was teaching insurance law in this or that law school, or a couple of times in a business school, I used to ask the class how many of them had read their homeowner's insurance policy, most had not. I asked the same question regarding auto policies. The result was the same. I have asked directors and officers whether they have read their policies. Many say they have tried. Few say that they understand them.

Should the "Must Have Read the Policy" Rule be overthrown? Probably its out-and-out abolition with nothing to perform at least one of its functions, namely, the prevention of fraudulent claims, would be a bad idea. So what can be done?

Why not somehow require that purchasers of insurance be educated as to the contents of the policy and sound claims procedure? This would be to create a duty to warn. It could be done in a variety of ways. Intermediaries would probably be the ones to do it.

One would wonder how much this would cost. One wonders how to design this for professional risk managers; perhaps there should be an exemption for them. What about purchasers who have a very limited education? What about those who have little

skill with English? Still, something helpful, fair, and just really should be done. // Quinn

Automobile Insurance

Louisiana Supreme Court Declares "Automobile Business" Exclusion Invalid Due to Conflict with Mandatory Liability Coverage

Louisiana Law Required Minimum Coverage for Permissive Drivers

Sensebe v. Canal Indemnity Co., __ So.3d __, 2011 WL 259929 (La. Jan. 28, 2011)

Case at a Glance

An automobile business exclusion in an automobile policy that excluded coverage of a permissive driver in the automobile business conflicted with Louisiana's Motor Vehicle Liability Security Law, which required coverage for permissive drivers, and the exclusion was struck down as contrary to public policy. The exclusion negated the liability coverage that was required to be included in a mandatory statutory omnibus clause. A determination granting an insurer's motion to dismiss a coverage suit against the insurer on the basis of the exclusion was reversed.

Summary of Decision

Laura Sensebe was driving in Louisiana when she was rear-ended by a pickup truck owned by Gregory Hyneman and operated by Deborah Boudreaux. At the time of the accident Boudreaux was an employee of a shop named Top Hatch that had contracted to replace the seat covers on the pickup. Boudreaux was transporting the vehicle so that the work could be done on the seats. Sensebe filed a suit seeking damages for personal injuries and property damage she allegedly suffered from the accident. Sensebe named as a defendant Mississippi Farm Bureau Casualty Insurance which insured Hyneman's pickup truck. Sensebe also named Canal Indemnity, which insured Top Hatch.