
Agents & Brokers

Under Connecticut Law, Whatever Agent Relation an Insurance Intermediary Has with Its Customer Usually Ends When Insurance Is Procured, but Not Always, e.g., When the Insurer Issues a Policy at Variance with the One Sought, and the Intermediary Agrees to Try and Correct It

This May Result When the Intermediary Suggests Non-Payment of Premium to His Customer for Some Reason, Receives Notice of Policy Cancellation, but Does Not Notify the Insured

Precision Mechanical Services, Inc. v. T. J. Pfund Associates, Inc.,
952 A.2d 818 (Conn. App. 2008)

Case at a Glance

The appellant, Precision, installed and repaired plumbing, heating and fire suppression equipment. There was a fire, and Precision was sued several times. Previously, it had sought liability insurance with 15 months coverage. The policy it obtained was a 12 month policy. Its intermediary, Pfund, tried to obtain an extension more than once but failed. Eventually, Pfund recommended to Precision that it stop paying premiums, and the insurer cancelled coverage for non-payment. Thereafter, but within 16 months of policy issuance, the fire occurred. Policy cancellation was communicated to Pfund but not to the insured, even by Pfund. Eventually, Precision sued Pfund. The latter moved for summary judgment, and it was granted on the grounds that, as a matter of law, intermediaries stop being agents of the insured once a policy was issued. The court of appeals reversed and remanded on the grounds that there are possibly applicable exceptions to this general rule, which may—depending on the facts—apply here.

Summary of Decision

The plaintiff, Precision, hired Pfund to obtain general liability insurance running from September 26, 1995 through January 1, 1997, a period of 16

months. Only a 12 month policy was obtained, it was from Scottsdale Insurance Company. The premium finance agency cancelled even that policy on May 30, 1996, but claims against Precision arose on August 8, 1996. (The insurer, the premium finance company, and the wholesale broker were also defendants, but they are ignored herein, since there were not parties to the appeal.)

Precision sued Pfund for breach of contract and negligence, but the latter obtained summary judgment after discovery, on the grounds that “[w]hen procuring insurance for a person [or entity], a[n insurance] broker becomes the agent of that person [or entity] for that purpose. . . . Once that purpose is accomplished, however, and the insurance is procured, the agency relationship between the insured and the broker terminates, and the broker is without any authority to do anything which further affects. . . the insured[,] unless expressly or impliedly authorized by the insured to do so.” *Lewis v. Michigan Millers’ Mutual Ins. Co.*, 228 A.2d 803 (Conn. 1967)(the case very much relied upon herein). Of course, the broker must accept the authorization by express or implied agreement. What happened here is that the trial court focused on the content of the above quote which comes before the word “unless,” and the court of appeals focused upon what comes thereafter. The latter held that there were fact issues which made summary judgment improper.

Pfund had requested a 16 month policy. It obtained a 12 month policy. It sought a correction through the whole sale broker in November 1995, December 1995, and perhaps again in February 1996. The financing was for a 16 month policy, but in February 1996 Pfund asked the finance company to shorten it to a 12 month arrangement. Perhaps the agency thought that this kind of request would stimulate the extension of the policy.

In April 1996, Pfund advised Precision that it had not been able to obtain an extension of the policy. It also advised the insured—its customer—that it had over paid and was hence entitled to a credit from the finance company. The agency advised the insured to cease paying the finance company, which the insured did. Thereafter, the lender cancelled the insurance policy. It mailed a notice of intent to cancel to the agency in early May 1996, and in late May it sent a notice of cancellation. The agency put both notices in its file but did not itself notify the insured, and the

insured received no notice of either. Throughout this period, said the court, the agency assured Precision that it was covered until September 1996. In July of that year, for example, it issued two certificates of insurance stating that the relevant coverage was in place.

On August 10, 1996, there was a fire loss, which has already been mentioned. Following the fire, several lawsuits were filed against Precision. It is not mentioned in the appellate opinion, but one wonders if the "real" plaintiffs—using Precision's name—were not those who suffered damages in those losses.

The appellate court agreed that a broker who has obtained the insurance requested and whose agency relationship with its customer, now the insured, has ended, has no legal duty to inform the insured if his policy is cancelled. The Pfund-Precision is not that situation, however. In the present case, there was a genuine fact issue as to whether an agency relationship existed, and if it did, whether Pfund violated it.

In the summary judgment adjudication context, Precision presented factual evidence regarding this issue, so that the granting of the summary judgment was an error. First, Pfund told Precision that the policy was in effect after it had been cancelled. Second, it advised Precision to discontinue making monthly payments to the finance company, thereby causing the policy to be cancelled.

Comment

Interestingly, the tone of the latter part of the opinion sounds like advise to the trial court to decide the case in the opposite direction. Of course, the opinion cannot and hence does not actually say this.

The court also included a long quote from the *Miller* court, which opinion has already been cited, regarding the difference between insurance agents and insurance brokers under Connecticut law. Here it is: "An insurance broker is one who acts as a middleman between the insured and insurer and who solicits insurance from the public under no employment from any special company and who either places an order for insurance with a company selected by the insured, or, in the absence of such selection, with a company the broker selected." The appellate court uses this citation as authority to its remark that Pfund the person is an agent and Pfund the company is a broker. Obviously, the language of the quotation from the *Miller* case does not fit will with ordinary language; it is unclear how it might fit with the court's distinction between Pfund the company and Pfund the person; and it is clear that this second characterization no more fits with ordinary usage than the more abstract one. The law has to get used to the fact that the terms "agent" and "broker" and the concepts they express are not neatly or uniformly distinguished in ordinary usage or ordinary understanding. The same is true in insurance industry usage, although "professionals" in the "biz" sometimes like to insist otherwise. // Quinn