

PROFESSIONAL LIABILITY ALERT

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Favorable Ruling for Insurance Agency and Its Agents *Court grants summary judgment, holding insured has a duty to read the policy*

A decision recently issued by the Crawford County Court of Common Pleas is a positive signal for insurance agencies and their agents. Although the insureds asserted numerous claims in the suit – including fraudulent misrepresentation, negligent procurement, breach of contract, and civil conspiracy – the Court saw the case for what it truly was: “This is a contract case and nothing more.”

In *Messer, et al. v. Knisely Insurance Agency, et al.*, the Court granted summary judgment in favor of an insurance company and two of its agents. Case No. 14 CV 0146 (Crawford Cty. Mar. 14, 2016). The case arose out of the theft of baseball cards and other items from the insured’s home. The insureds kept the items in a couple of safes in their garage. The insureds filed suit against the insurance company for coverage and against the insurance agency (and later two agents), claiming they failed to obtain coverage for the personal items.

During the lawsuit, one of the insureds testified that he had an initial meeting with one of the insurance agents shortly after the purchase of their home to discuss a home insurance policy. He admitted in his deposition that he did not specifically request coverage for the personal items that were later stolen. His wife then testified regarding a second, “secret” meeting with the insurance agent in which she did request coverage for the items at issue. The testimony ran in direct contradiction to verified answers to interrogatories that had been previously submitted.

The insurance company moved for summary judgment on the basis that the insureds failed to file suit against the insurance company within the one-year deadline set forth in the insurance policy. The Court granted its motion.

The insurance agency and its agents then moved for summary judgment, presenting two separate arguments. First, because the insureds failed to timely enforce their contractual rights under the policy with the insurance company, their claims against the insurance agency and its agents were barred as a matter of law. Second, the insureds failed to request coverage for the items at issue in the lawsuit.

The Court agreed with both arguments. The Court explained that, the insureds were obligated “to read the policy and to exercise reasonable care in enforcing contractual claims.” Because they failed to do so, the insureds “lost any claim they might have had against the [insurance] company” and so “may not then recover against the agent [and agency] on some other basis.”

As to the request for coverage, the Court explained that, “Coverage of a particular type and in a particular amount was requested, was obtained by the agency and provided by the company.” Yet, “the very risk [the insureds] chose to ignore was the one which came to pass.”

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