



Posted on: June 1, 2011

HOW FAR DOES A BROKER'S DUTY OF CARE EXTEND?

Richards Buell Sutton's Insurance Law Newsletter

By RBS Lawyers

Notice to an insurance broker of a change in an insured's living arrangements may trigger new duties of care for the broker. In *Estate of Karen Beck v. Johnston, Meier Insurance Agencies Ltd.*, the British Columbia Court of Appeal addressed an insurance broker's duty of care in a unique and tragic fact pattern.

Background

Homeowner Karen Beck separated from her husband in 2005 and moved out the family home. Her husband remained. In November 2007, the husband destroyed the home by arson and murdered Ms. Beck. The homeowners policy, which inceptioned in 1995 and was renewed each year through July 2007, identified the husband as a named insured and provided the usual coverage exclusion for intentional acts. Ms. Beck's estate made a claim on the policy and the insurer denied coverage on the basis of the exclusion. Later, the insurer settled with the Estate for half the claim amount. The Estate then sued the broker in negligence to collect the balance of the claim.

The Estate asserted that Ms. Beck's change in circumstance (i.e. moving out of her home) constituted a change of risk of which the brokers were aware. This awareness created a duty to provide relevant information about the types of coverage available and about which forms of coverage were required to meet her current needs. The broker countered that no duty was breached and that foreseeability and cause of the loss of coverage were not established. The trial judge found for the plaintiff and the broker appealed.

The Ruling

In considering the appeal the court focused on the broker's duty of care as well as foreseeability and causation. In respect of the duty of care the chief finding of fact was that the broker had information indicating that Ms. Beck had moved out of the family home and thus, it was on notice of a possible change in her insurance needs and a possible gap in coverage. This notice took the form of Ms. Beck's 2006 purchase of a tenant's insurance policy for her own apartment while she continued to pay the premiums on her homeowner's policy, including for the year 2007. The Court of Appeal affirmed that when renewing an insurance policy a broker has a duty to provide advice about the types of coverage available to the insured and any gaps in that coverage. This advice needs to be given particularly when the broker is or ought to





be aware of a change in the insured's circumstances. Simply renewing a policy without making necessary enquiries on change of circumstance and giving proper advice on insurance needs resulting from those changes may result in a breach of duty of care.

In respect of foreseeability the broker argued that the Estate had to establish that Mr. Beck posed a real risk of harm to the home prior to the fire that damaged it. Both levels of court disagreed. The trial judge ruled that the foreseeable harm at issue was really not the damage to the home but the gap in coverage occasioned by the broker's failure to give proper advice. The Court of Appeal agreed and added that the fact the intentional act exclusion is common in homeowner insurance policies suggests that the risk of an intentional act by a co-insured affecting coverage is readily foreseeable.

In respect of causation the Estate had to show that "but for" the negligent advice the losses would have been insured. The question was would Ms. Beck have chosen another, more costly policy had she been properly advised of the exclusion and her insurance options. The answer to this question turned on the inferences to be drawn from Ms. Beck's past conduct regarding insurance. In our view both levels of court gave the Estate the benefit of the doubt in respect of drawing these inferences. The primary inference drawn was that Ms. Beck, had she been advised of the availability of a rented dwelling policy without an exclusion for tenant's intentional acts, would have purchased it regardless of that policy's greater cost.

Practical Impact for Brokers and Insurers

Beck is a valuable reminder of how easily specific duties can be triggered. Here notice from the insured of a change of residence was indirect, and not delivered with an intention of giving notice. Clearly, the broker never considered itself to be on notice but it was and as such had to act upon renewal as if the policy was incepting.

In light of *Beck*, insurance brokers and their errors and omissions insurers should be mindful of the following:

- appropriate coverage advice given when an insured first purchases a policy may not be sufficient to discharge the duties that arise on renewal, following notice of a change in risk;
- notice of departure of a spouse from a home will trigger specific duties when advising on a homeowners policy; and
- notice of a change in risk may come indirectly from an insured and with no intent to give such notice.

