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Attaching A Copy Of Policy Upon Renewal: Insurers' Duty?

Law360, New York (December 05, 2012, 12:43 PM ET) -- Some insurers provide their policyholders with a complete copy of the insurance policy only when the policy was first issued and not again when the policy is renewed. At renewal, the insurers provide updated declarations pages and notice of any changes in the policy coverage.

Some states, such as Minnesota, have enacted statutes that provide that insurance policy terms and conditions are not enforceable if those terms and conditions were not incorporated in or attached to every insurance policy issued in that state. Do statutes such as this require an insurer to physically attach every term and condition of the insurance policy upon renewal, even when there are no coverage changes?

That was the question before the Minnesota Court of Appeals in Schupp v. United Fire & Casualty Co., 821 N.W.2d 824 (Minn. Ct. App. 2012). And in Schupp, the court held that an insurer was not required to provide its insured with a paper copy of every term and condition of that insured's commercial general liability policy (CGL) each year upon renewal.

The Schupp case arose out of a fatal automobile accident and a claim for coverage under a CGL policy that contained the standard auto exclusion. Schupp owned the Northern Pine Lodge Inc., a resort in northern Minnesota. Since 2003, Northern had purchased its CGL coverage through a local insurance agency. Schupp had obtained separate auto insurance coverage for Northern's vehicles through a different agency.

Since Northern first purchased that policy from United Fire & Casualty Co. in 2003, the policy's CGL form included exclusion 2.g., the standard Insurance Services Office's "Aircraft, Auto and Watercraft" exclusion. This exclusion specifically excluded coverage for losses resulting from bodily injury or property damage arising out of the "ownership, maintenance, use or entrustment to others of any ... 'auto' ... owned or operated by or rented or loaned to any insured." Northern renewed this policy every year after 2003.

United Fire provided a complete copy of the CGL policy to Northern when it was first issued in 2003. But unlike with new policies, United Fire did not give its policyholders a full copy of its policy upon renewal, but Instead, it provided them a new declarations page and copies of any forms that changed or modified the policy.

Because the CGL form had not been modified or amended since 2007, a copy of it was not attached to the 2009 renewal for Northern. But the "Forms Supplemental Declarations Page" provided to Northern included a listing of the policy's coverage forms, including the CGL form.

On Aug. 12, 2009, Schupp had driven one of Northern's minivans when he collided with a motorcycle. The two riders on the motorcycle were killed, and wrongful death claims were brought against Schupp and Northern. Schupp and Northern's auto insurer partially paid for the claims, but the plaintiffs in the wrongful death action sought additional amounts from Schupp and Northern to settle their claims.

Northern sought coverage under the United Fire policy, but United Fire denied coverage, citing the auto exclusion. Thereafter, Schupp and Northern sued United Fire, asserting claims for estoppel and declaratory relief.

Schupp testified in deposition that he received and reviewed a complete copy of the United Fire policy when it was first issued in 2003. But Schupp claimed that he had never seen exclusion 2.g. and that he assumed the United Fire CGL policy would cover any losses arising from the use of an automobile above and beyond his separate auto policy.

Both parties filed cross motions for summary judgment, with Schupp and Northern arguing that United Fire could not rely on the auto exclusion because it did not comply with the requirements of Minnesota Statute Section 60A.08, Subdivision 1, which provided:

A statement in full of the conditions of insurance shall be incorporated in or attached to every policy, and neither the application of the insured nor the bylaws of the company shall be considered as a warranty or a part of the contract, except in so far as they are so incorporated or attached.

The trial court granted Schupp and Northern's motion and denied United Fire's motion. The trial court found that United Fire could not enforce the auto exclusion because United Fire did not comply with the requirements of Section 60A.08 when it renewed the policy in 2009.

The trial court also reasoned that Section 60A.08 did not permit incorporation of policy provisions by reference. Thus, the trial court found that the statute "nullified" the auto exclusion because it was not incorporated into the renewal policy.

On appeal, the Minnesota Court of Appeals reversed. In framing the issue, the appellate court initially noted that Section 60A.08, Subdivision 1 referred to "every policy" and not just new policies. Thus, it concluded that United Fire was required to comply with the statute each time it renewed Northern's policy.

So, it framed the issue as whether "[a] statement in full of the conditions of insurance" was "incorporated in or attached to" the renewal documents that United Fire sent to Northern in 2009. The court held that listing the applicable forms on the "Forms Supplemental Declarations Page" was sufficient to meet the "incorporated in or attached to" language of Section 60A.08, Subdivision 1.

The court focused on the “incorporated in or attached to” language of the statute in the context of a policy renewal. Relying on dictionary definitions of “incorporate,” the court found that the statute was not ambiguous and did not require an insurer to physically attach each and every term and condition of insurance to a renewal policy; rather, the insurer may comply with the section by incorporating terms and forms by reference.

Applying this construction, the court found that the CGL coverage form that contained exclusion 2.g. was clearly “incorporated in” the renewal documents by specific reference on the “Forms Supplemental Declarations Page," which specifically listed the CGL coverage form. The court noted that since no asterisk appeared next to the title of the form, an insured would have notice that the form remained unchanged from the previous year.

The court concluded that this interpretation did not frustrate the statute’s apparent goal of ensuring that a policyholder has access to the substantive provisions of his or her insurance policy, especially when a new policy issues. The court further observed that in the case of renewal, where the policyholder is presumably familiar with his or her policy, requiring an insurer to physically send the insured all coverage forms, schedules, endorsements and amendments each year “could effectively drown the insured in paper and make it less likely that the insured is notified of key changes to the policy.”

Lastly, the court observed that complete policy documents were available “24 hours a day, seven days a week” on United Fire’s website, and United Fire provided Northern with updated paper copies of the relevant policy documents from the time it became a policyholder in 2003. The court reasoned that it was reasonable to think that a small business owner like Schupp would keep, and thus be able to refer back to, those important documents.

So, the court found that Schupp could not successfully claim ignorance of the terms of the CGL coverage form, specifically the auto exclusion, and that Schupp and Northern lodge knew, or should have known, that the policy contained exclusion 2.g., even though they did not receive a copy of the CGL coverage form in 2009. Thus, to validly renew an insurance policy in Minnesota, an insurer need not physically attach each and every term and condition of insurance to the renewal documents.

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