

When Is a Renewal a Renewal? re: Insurance

Article By:

Larry P. Schiffer

A recent case decided by the United States Court of Appeals for the *Third Circuit* addressed the deceptively simple issue of whether a renewal is a renewal. [Indian Harbor Ins. Co. v. F&M Equip.](#), No. 14-1897, 2015 U.S. App. LEXIS 17901 (3rd Cir. Oct. 15, 2015). You know the situation; a three-year policy is about to expire and the insurer provides new terms and conditions for another three-year term. Is that a renewal, or a cancellation and offer of a new contract?

The situation in *Indian Harbor* was much more interesting and complex. Here, the insurance policy provided that the insurance company would offer the policyholder a renewal when the current policy term expired. At the end of the policy term — an unusual 10-year policy term — the carrier offered a renewal, but one that was for only a year, had a much smaller premium and eliminated coverage for a specific location. A dispute arose over whether the “renewal” was a true renewal and whether the “renewal” offer breached the existing insurance contract’s promise of a renewal.

The law in most states addresses the change in terms and conditions in the context of cancellation or termination of an insurance policy. The laws and regulations often provide that a change of material terms and conditions without proper notice is not effective and that the policy will renew on the basis of the existing terms and conditions. But if proper notice is given, a change material terms and conditions may be offered in the context of a new contract. In this case, however, the specific terms of the policy provided that the insurer had to offer a renewal and provided in an endorsement a limited set of 5 reasons why the insurer may refuse to offer a renewal. None of those reasons appeared in this case.

Litigation arose over whether the offered terms met the renewal promise in the contract. Motions for summary judgment were filed. The motion court held that the insurer had given adequate notice of its intent to change the policy and denied the policyholder’s motion for summary judgment. The Third Circuit reversed.

In reversing, the Third Circuit focused on the language of the insurance policy. Now, this language was pretty unique in promising a renewal offering and limiting the ability of the insurer to cancel the coverage. The court was tasked in determining what the parties’ meant when they agreed that the insurer would not “refuse to offer a renewal extension of coverage.” The arguments were polar opposites. The policyholder contended that the insurer had to offer the same or substantially similar terms to the original contract. The insurer argued that the renewal need only be any offer of a new contract so long as the notice was in advance and provided for any commercially reasonable

changes of terms and conditions.

So what's the answer? The court found that the case law on the subject was "quite thin." There was one case that the court found in the 8th Circuit with which the court agreed. Here the court came up with an interesting analysis. First, it is clear that a renewal does not have to be the identical terms and conditions. Thus some deviation is anticipated and will not breach the contract. It is also true that if any new offer counts as a renewal regardless of the terms, the promise of a renewal is illusory. The court noted that the insurer could not fulfill its obligation by offering a renewal that it knows the policyholder will decline.

What is required, held the court, is a continuation of coverage on the same or nearly the same terms as the policy being renewed. Now, with a 10-year term, that can be quite a burden given that many things change over 10 years. What the court landed on was that a reasonable change of price does not render the new contract a nonrenewal, but the remaining terms must be recognizable extensions of the original contract.

The court also commented on the concern by the carrier that it would be obligated to perpetual renewals under the policyholder's position. The court thought that the insurer need not incorporate the broad renewal provision in future contracts, but the court declined to opine on the issue of whether the insurer was stuck with a perpetual contract.

The bottom line here is that when an insurer makes a promise to offer a renewal, the 3rd Circuit requires that promise to be fulfilled by an offer that provides essentially the same recognizable terms and conditions with allowable differences for reasonable premium changes. Whether an insurer should include a provision promising to renew in the future is another question and is a provision that an insurer should think long and hard about before incorporating into an insurance contract.

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National Law Review, Volume V, Number 292

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