

Insurance Broker Had No Duty to Inform Security Company Insured of Change in Exclusion Language for Alarm Systems

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[Schlossberg v. B.F. Saul Insurance Agency of MD, Inc., Case No. GJH-13-3076 USDC \(Dist. of Maryland, Southern Div.\) December 8, 2015](#)

Plaintiff was the bankruptcy trustee for DTM, a company that provided security guards to various government agencies including the Department of Defense (DOD). Defendant insurance broker assisted DTM in obtaining a commercial general liability policy and an umbrella policy. DTM, in filling out applications for coverage, never requested coverage for “Burglar/Fire Alarms” which required a separate application. Both the GL policy and the umbrella policies contained alarm exclusions, which excluded coverage for “ownership, maintenance, operation, use or installation of any alarm, alarm device, alarm component or alarm system”. When DTM sought a renewal of its policies that became effective in 2007, the umbrella policy exclusion had been changed by inserting the word “monitoring” into the exclusion. The broker sent the new policies to DTM with a cover letter pointing out the exclusions for alarm systems and instructing that if this was a concern, they should let him know immediately.

DTM had a contract with DOD to provide guards at its Fort Washington facility that included monitoring the alarm system per “post orders,” an established set of procedures. The insurance broker was never advised of this requirement and apparently DTM management was not aware of it until a failure to respond to a heat sensor caused \$3.6 million in damage to a specialized computer system. Coverage was provided by the carrier under the GL policy for DOD’s claim, but was denied under the umbrella policy. When DOD threatened to withhold payments under the contract, DTM filed for Chapter 7 bankruptcy protection. The plaintiff filed an action for professional negligence against the broker alleging failure to warn about the change to the alarm exclusion caused DTM to cease operations and file for relief under Chapter 7. The U.S. District Court for the District of Maryland granted the broker’s motion for summary judgment based on lack of duty.

Question Before the Court

Does an insurance broker have a duty to obtain coverage that the insured never requested, but as a matter of hindsight really needed?

No. Under Maryland law, an insurance broker may be found negligent when he is employed to obtain a policy that covers certain risks if he fails to provide a policy that covers those risks or fails to inform the insured that the policy obtained does not cover the risks sought to be covered. It is the insured's responsibility to advise the broker as to the insurance he wants, including the limits of the policy. The Court found DTM continuously failed to request any coverage related to alarm systems and the broker had no way of knowing that any such coverage might be necessary. The Court held that the broker did not breach any duty in failing to procure coverage for alarm monitoring.

The Court also held that DTM had no duty to explain the import of the addition of the word "monitoring" into the umbrella policy alarm exclusion. An insured is permitted to assume that when a policy is renewed, it contains the same terms as the previous policy unless the insurer provides proper notice of a modification. A duty to explain changes in a renewal policy only arises upon a "significant change" in the policy. The Court found that it was only with the benefit of hindsight, that anyone, including DTM personnel, became aware that the exclusion for any alarm related activity might pose a problem for DTM, which had never bothered to respond to the broker's letter about concerns regarding the alarm exclusion.

What the Court's Decision Means for Practitioners

The insurance broker gave proper written notice to the insured about the existence of the alarm exclusion and requested a response with any concerns they had. The insured never responded. The Court correctly found that no one at DTM was concerned about the alarm exclusion until the claim was made and then it suddenly needed the coverage. The Court also found that the plaintiff could not prove the element of causation.

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