

Does Tilted Turtle's Slow Payment and Carapace Response Entitle Insurer to Liability Policy Rescission?

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A California federal court has ruled that an insured's misrepresentation in a Statement of No Loss in support of reinstatement of its liability insurance policy provided the basis to rescind the policy reinstatement, but not the policy. [*Northfield Insurance Co. v. Tilted Turtle Entertainment, LLC*, Case No. 1:19-cv-01583-AWI-SKO \(E.D. Cal. March 18, 2021\)](#). The Tilted Turtle, a California bar and grill, was covered under a liability policy from January 24, 2019, through January 24, 2020. When the Tilted Turtle failed to make its premium installment payment in March 2019, the policy was cancelled.

In April 2019, Marianne Magana, the owner of the Tilted Turtle, witnessed a shooting on the premises and realized that legal claims against the Tilted Turtle could result. Magana contacted an attorney for legal advice. She also contacted her insurance agent about the Tilted Turtle's coverage, but she did not mention the shooting. The agent informed her that she was required to make a payment under the policy. To reinstate coverage, the insurer required Magana to execute a Statement of No Loss, certifying that she was not aware of any losses, accidents, or circumstances that might give rise to a claim under the policy. Following Magana's execution of the Statement, the policy was reinstated.

In November 2019, the two people injured in the April shooting filed a lawsuit against the Tilted Turtle for negligence and premises liability. In the coverage litigation, the insurer sought rescission of the policy and a declaration that it had no duty to defend or indemnify the Tilted Turtle in connection with the shooting.

The insurer's rescission argument was based on Magana's misrepresentations in the Statement of No Loss. The Tilted Turtle argued that the insurer waived any right to rescission because it was aware, or should have been aware, of the shooting when Magana executed the Statement of Loss. Magana testified at her deposition that her insurance agent was "aware" of the shooting because the shooting "was all over the news." She further testified that she "believe[d]" the agent "heard about [it] in the news;" that she was "pretty sure" he had read about it in the local papers; and that he told Magana that "he had got contacted from a couple of people." The court ruled that Magana's testimony was "of no consequence" because (1) the agent was the Tilted Turtle's agent, not an

agent of the insurer; (2) Magana’s testimony was speculative and equivocal; and (3) Magana admitted that she did not know when the agent learned of the shooting. Although the court acknowledged California case law finding that “an insurer can have a ‘duty of further inquiry’ when it has ‘before it information that plainly indicates that the insured’s statements are not true,’” the court ruled that the insurer had not waived its right to rescission because the Tilted Turtle failed to provide evidence that the insurer was on notice of the shooting.

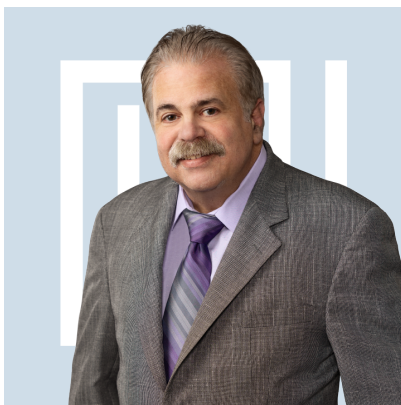
But because the policy was no longer in effect after the Tilted Turtle missed its installment payment, the insurer was not entitled to rescission of the policy. The court stated that the insurer’s reinstatement of the policy “can only be seen as a contract separate from the Policy and subject to rescission in its own right.” Therefore, the court ruled that the insurer “is entitled to rescission of the reinstatement –not to rescission of the Policy –based on the Statement of No Loss.”

With regard to the insurer’s duty to defend and indemnity, the court stated:

The April 21, 2019 shooting took place after the Policy was terminated and during the period of time covered by reinstatement. Since this order will rescind the reinstatement, it necessarily follows that [the insurer] has no duties in connection with the shooting under the Policy or the reinstatement.

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