

S.C. Court of Appeals Finds Insured Liable for Earned Premiums on Workers' Comp Policies



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Practice Areas:

- Insurance Coverage
- Professional Liability

On January 9, 2013, in an unpublished opinion, the South Carolina Court of Appeals found (1) an insured was liable to its insurer for final premiums based upon remuneration paid to the insured's employees; and (2) the insurer did not act in bad faith by cancelling the insured's workers' compensation policy where the insured failed to provide proof required under the terms of the policy despite ambiguous language concerning the type of proof required.

In *Travelers Property Casualty Co. v. Senn Freight Lines, Inc.*, Travelers appealed the trial court's denial of its JNOV and new trial motions after a jury returned verdicts against it on a collection claim against Senn seeking premiums on three policies and a counterclaim Senn brought against it for bad faith cancellation of the third insurance policy. Here's how everything breaks down:

Liability for Payment of Premiums

Travelers argued the policies covered Senn's owner/operators and contemplated the final premium due would be based upon remuneration paid to these owner/operators. On this basis, Travelers contended Senn owed it earned premiums. The court agreed.

All three policies provided workers' compensation coverage for "the benefits required of you by the workers' compensation law." Workers' compensation law requires coverage for statutory employees. The court noted that the evidence in the record indicated only that the owner/operators were statutory employees of Senn – the drivers transported loads for Senn, and that responsibility was an important, integral part of Senn's trade, business or occupation.

The court also found the evidence in the record only indicated Senn was liable to Travelers for unpaid final premiums based upon remuneration paid to the owner/operators. Although Travelers produced evidence the owner/operators were statutory employees of Senn, no evidence indicated Senn provided Travelers with "proof" the owner/operators "lawfully secured their workers' compensation obligations" as required by the policies. Because the court found the phrase "lawfully secured their workers' compensation obligations" to be ambiguous, it construed the phrase to mean proof of compliance with workers' compensation laws as opposed to proof of workers' compensation insurance. Although Mr. Senn testified all the owner/operators had less than four employees and provided Travelers with the information it requested, he did not testify he provided Travelers with proof either the owner/operators had statutory workers' compensation insurance or employed less than four people. Accordingly, the court found Senn was liable for the payment of premiums and remanded the matter to the circuit court for a new trial as to damages.

Bad Faith

Travelers also argued there was no evidence that it cancelled the third policy in bad faith. The court agreed, indicating that even if South Carolina courts recognize a claim for bad faith cancellation of an insurance policy, no evidence in the record could be reasonably construed to support Senn's counterclaim. The third policy stated Travelers "may cancel this policy," with the only restriction being that Travelers provide ten days notice prior to doing so. Senn agreed that such notice had been given. Further, the court noted, all the evidence addressing the auditor and Mr. Senn's dispute over premiums due indicated Travelers had a "reasonable basis to support" its decision to cancel the policy:

The policy's language establishing what type of proof Senn Freight was required to produce as to owner/operators was ambiguous, and the record clearly shows Travelers canceled the policy because Mr. Senn failed to provide proof relating to owner/operators' insurance and the number of employees.

Accordingly, the court found Travelers' conduct after the cancellation did not show bad faith at the time it made the decision to cancel and reversed the denial of JNOV on the bad faith claim.

About Logan Wells

Logan Wells is an attorney practicing in the areas of insurance coverage and professional liability. She received her undergraduate degree in history and political science from Furman University and earned her juris doctor from the University of South Carolina School of Law.

During her undergraduate career, she worked for a law firm in Spartanburg as a legal assistant. While in law school, she worked as a summer associate for Collins & Lacy, before joining the firm as an attorney in the fall of 2009.

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