INSURANCE SUCKS

COUNSEL'S CORNER

Hate reviewing insurance provisions? Or even worse, do you ignore them entirely? You are not alone.

I love reading insurance policies. Said no one, ever.

But based on this new case, you may want to reconsider that strategy.

Sierra Equipment leased heavy construction equipment to LWL Management. The lease agreement required LWL to insure the leased equipment, deliver a copy of the insurance policy to Sierra, and obtain a policy in form and content satisfactory to Sierra.

The lease agreement did not require that the policy name Sierra as an additional insured, or contain a loss payable clause listing Sierra.

LWL filed for bankruptcy about a year after Sierra and LWL had entered in the lease agreement. After the filing, Lexington Insurance Company issued a property insurance policy with LWL as a named insured. *The policy did not mention Sierra*.

During the bankruptcy proceedings, Sierra discovered that much of its equipment had been damaged, lost, or destroyed. Sierra sought payment from LWL. When nothing came of Sierra's claim, Sierra made demand for payment upon Lexington, and then ultimately filed a lawsuit against Lexington.

Sierra asserted in the litigation a claim for insurance proceeds for the loss of and damage to Sierra's equipment. The district court dismissed Sierra's claim, concluding that Lexington was out of luck since the policy did not name Sierra as an additional insured.

Sierra appealed.

In the Circuit Court, Sierra claimed that the insurance policy was intended to benefit the equipment lessor and consequently, Sierra was entitled to tap the policy proceeds.

The Circuit Court reviewed the equipment lease and determined that LWL was not required to obtain insurance with a loss payable clause to Sierra. And, since the Lexington policy did not contain such a clause, Sierra would not be entitled to access the policy proceeds.

Lexington Insurance Company wins. See *Sierra Equipment, Inc. v. Lexington Insurance Co.;* No 17-10076; US Court of Appeals, Fifth Circuit, May 15, 2018: http://www.ca5.uscourts.gov/opinions/pub/17/17-10076-CV0.pdf.

Lessons Learned / Questions Asked:

1. I'll wager the commercial leases you use obligate both the LL and T to maintain insurance coverages. Further, those same provisions state that the other party must be named as an "additional insured," with a "loss payable" clause or similar verbiage.

2. Further, I'll bet that even your commercial purchase and sale agreements obligate the buyer to provide insurance during the due diligence period, to insure the seller against liabilities and damages created by the buyer's on-site inspection of the property.

3. Are you checking to be sure that not only are the insurance coverages properly stated in the policies or certificates, but that your interests are properly secured by naming your entity as "loss payee" and "additional insured"? Because based on this case, the failure to do so may prove catastrophic if you need insurance proceeds to cover a substantial loss, but they are not available to you due to administrative or management oversight.

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