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Read And Understand Your Policy Right Away Or Else

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"Insurance customers can read their policies and learn of any defects."

At least, that's what the Illinois Supreme Court said on Oct. 18, 2018, in its ruling on *American Family Mut. Ins. Co. v. Krop*. Mind you, the court didn't offer any support for this proposition. It simply said that "because insurance customers can read their policies and learn of any defects, the discovery rule typically will not delay the start of the two-year limitations period for negligent failure to procure insurance."

Readers of this blog surely understand insurance policies more than most people. But I'll go out on a limb and suggest that you might not always understand every provision. Heck, the fact that policyholders sue and sometimes prevail in coverage litigation means that even insurance companies don't always understand the policies they wrote.

Let's examine the case in which the Illinois Supreme Court made its pronouncement. The story began in early 2012, when Walter and Lisa Krop sent a copy of their Travelers homeowner's policy to Andrew Varga, an agent for American Family, and asked for the same coverage. Varga sold the Krops an American Family policy, and they renewed it in 2013, 2014, and 2015.

In 2014 (yes, during the period of the third of four successive American Family policies), someone sued the Krops for defamation, invasion of privacy, and intentional infliction of emotional distress. American Family denied coverage and filed a declaratory judgment action asking a court to affirm the

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denial. American Family contended that the lawsuit against the Krops didn't appear to allege "bodily injury" or "property damage," which were keys to liability coverage under the policy.

In 2015, the Krops countersued, alleging that American Family and its agent, Varga, negligently failed to provide them the policy they requested, that is, equal to the Travelers policy. In particular, the American Family policy did not include, as the Travelers policy did, liability coverage for "personal injury," which often is defined to include claims or offenses such as defamation and invasion of privacy. (We have previously commented on similar coverage frequently included in commercial general liability policies.) In other words, if the American Family policy were more like the Travelers policy, American Family might not have denied coverage for the lawsuit filed against the Krops.

Unfortunately for the Krops, the Illinois Supreme Court held that their claims against American Family and Varga were barred by Illinois' two-year statute of limitations for claims against insurance producers. 735 ILCS 13-214.4. Critically, the Court held that the Krops' cause of action accrued in 2012, when they received the first American Family policy, regardless of the fact that the claim against them and American Family's denial happened in 2014. The Court said the Krops should have read, understood, and done something about the fact that the American Family policy didn't provide liability coverage for "personal injury."

Can we think of some sorts of policy defects that should be easy for almost anyone to spot? Like a $100,000 total policy limit when you asked for $300,000, if the wrong amount showed up on the declarations page or the letter confirming coverage? Or if the address of the home were a completely different street and town? Or if an auto policy omitted one of the cars requested to be covered?

But how many people actually receive a complete copy of the insurance policy, especially on renewal? And how many, after making a broad request to an agent, like "get me the same coverage as my old policy, but for a lower premium", are able to read a homeowner's policy and spot and understand the presence or absence of liability coverage for "personal injury"?

In the business context, how many companies would understand whether a commercial general liability policy has the particular "additional insured" and "waiver of subrogation" endorsements they need? Would they understand and push back on an "aircraft products and grounding exclusion" endorsement? Would a company reading a D&O policy understand the difference between a bad acts exclusion that does or does not have a "prior adjudication" exception? How about all the variations in cyberinsurance policies?

Perhaps some of these circumstances will be presented in future cases that call the Illinois Supreme Court's decision in *Krop* into question.

In any event, will insurance companies and brokers point to this decision as a powerful and perhaps frightening reminder that every individual and every company should read every insurance policy promptly upon receipt?