TECHNICAL ADVISORY

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Executive Summary

IIABL has received a number of phone calls and emails concerning a recent Louisiana Supreme Court ruling: Calvin Landry & Mary Landry vs. Progressive Security Insurance Company, ET AL. The court's ruling in this case has some potentially damaging implications both for policyholders and agents. While Progressive is listed as the first defendant, the facts of the case revolve around a policy written by Financial Indemnity Company, a Kemper company.

Necessary Action

Agents should do their best to stay informed on the coverages provided by policy forms for each company with whom they do business. Read the insuring agreements carefully to ensure that appropriate coverage is afforded. Best practices also suggest that insureds should be provided a complete copy of the policy form as soon as is practical after inception, because Louisiana law stipulates that it is the policyholder's responsibility to read and understand their policy.

BACKGROUND

SUMMARY OF THE FACTS OF THE CASE

Mr. Shaibi, the named insured on the Financial Indemnity policy, was driving his friend's Toyota Sienna to an auto shop to replace a flat tire as a favor, and he was involved in an accident. His friend, Mr. Ali who owns the Sienna, had a Progressive policy on the vehicle in question. Calvin and Mary Landry sued for damages alleging that they suffered injuries in the collision. Progressive (the vehicle owner's insurer) paid policy limits. Financial Indemnity, the driver's Auto Liability insurer, argued that because of the limited non-owned auto liability language in their insuring agreement, their policy should not respond on behalf of their named insured because he was driving someone else's vehicle. The district court found in favor of Financial Indemnity, then that ruling was overturned on appeal, and so it ended up at the Louisiana Supreme Court.

The Supreme Court, in a 4 to 3 ruling, found in favor of Financial Indemnity, ruling that their narrow policy language limiting coverage on non-owned auto liability did not violate the statutes cited by the plaintiffs and that its application in this case was not against the public interest. The specific statute in question is the Louisiana Motor Vehicle Safety Responsibility Law which requires all vehicle owners to carry Auto Liability insurance. **The court's strict reading of the statute holds that an "owner's policy" is required, but an "operator's policy" is not, and therefore insurance companies have the right to carve out coverage for operation of a non-owned vehicle in some circumstances.** They then refute the argument that it is against the public interest to allow insurers to exclude such coverage in this case. The justices specifically mention in the majority opinion that their ruling denying the "public interest" argument is applicable only narrowly to the circumstances of this specific case, and they allow that the argument may be applicable in other circumstances (such as an emergency or when the insured's listed vehicle is damaged or under repair).

THE POLICY LANGUAGE

In most personal auto policies, the named insured has liability coverage when driving someone else's vehicle with their permission, and Louisiana law requires that all vehicle owners carry liability insurance. So, why did the district court and then the Louisiana Supreme Court allow Financial Indemnity to exclude important coverage from policies? The insuring agreement of the Financial Indemnity policy reads:

We will pay damages, except for punitive damages, for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident arising out of the:

1. *Ownership;*
2. *Maintenance or use; or*
3. *Loading or unloading;*

of 'your covered auto.'

The Financial Indemnity policy defines “covered auto” as:

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1. *The vehicle(s) described in the Declarations.*
2. *Any “newly acquired auto”;*
3. *Any owned “trailer” while attached to a vehicle insured under this policy; or*
4. ***A “Non owned auto”.***

Finally, the policy defines a **“non-owned auto” as:**

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any “private passenger auto” you do not own while:

Used as a temporary substitute for “your covered auto” which is out of normal use because of its:

1. ***Breakdown;***
2. ***Repair***
3. ***Servicing;***
4. ***“Loss”; or***
5. ***Destruction.***

A. ***Rented by an “insured;” or***
B. ***Used by you or a family member for demonstration or test drive purposes.***

Comparing this Financial Indemnity language to the ISO Personal Auto Policy form, the “covered auto” and the “non-owned auto” definitions are similar, however the insuring agreement has significant differences. The ISO insuring agreement reads:

A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident.

<u>As you can see, the Financial Indemnity policy limits coverage to ‘your covered auto’ while the ISO language is far broader, applying to any auto accident.</u>

As noted in the dissenting opinions, subtle contractual language like this can set a disastrous trap for unwitting insureds. Few policyholders have the necessary technical knowledge to read a policy in the detail needed to see the differences between these forms, and this may lead to consumers erroneously believing that they have coverage while driving non-owned vehicles. This problem is then compounded by the application of Louisiana’s “no pay, no play” rule for uninsured motorists. An insured that unwittingly drives someone else’s vehicle without coverage would be subjected to that rule, like any other uninsured driver, and they would be unable to collect the first $15,000 of coverage, even for a not-at-fault accident.

Agents may also be left in a precarious position. In a world of increasingly differentiated forms, with each insurer changing the standard ISO language to fit their individual needs and guidelines, agents often cannot keep up. Reading every new version of every form for every carrier that they represent is a Herculean task for an agent. When small deviations, like the one in this case, buried deep in the policy create significant coverage deficits for policyholders, it opens the agents selling the policies up to significant E&O exposure.

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