

The Community

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Welcome

By Mark Barrett

One area of service we strive to provide is "Coordination of Coverage." We represent a number of insurance carriers and work with all of them for both long and short term results for our clients. Many times some little factors dictate what insurance carriers work best for the client. The following shows results of an agent failing to look at all the factors.

A recent New York court ruling concerned a liability loss suffered by an insured with a patchwork of uncoordinated insurance policies. The case provides a worrisome example of what can happen when an insured (the owner of many small businesses with a variety of business names) attempts to insure multifaceted personal and business risks under a discordant group of policies from multiple insurers and multiple brokers.

In this case, *Picone v. Great Northern Ins. Co.*, 2008 NY Slip Op. 33029 (Sup. Ct., Suffolk Co., Nov. 3, 2008), the insured's guest was injured on a vacant, undeveloped piece of land owned by one of the insured's businesses. The insured notified numerous insurers of the loss, and all declined coverage. As a result, the insured and two of his businesses sued five different insurers and three different brokers. The insurers prevailed in nearly all of the motions to dismiss the court case.

This case is a prime example why the business owner needed to work with one agent, have that agent coordinate the policies, and make sure the coverage is in place.

Mark Barrett

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Marketing Corner

Marketing Corner

Signage and parking tips for your community

Needless to say, I get to inspect a lot of communities. Last year was over 150 (and that was down from most years). I'm always amazed at the communities that have little to no signage directing new prospect traffic. Clients often ask me what to change to help with sales and I always state "a good first impression is hard to beat!" (The first impression is within the

first 100 yards). However, in this tough economy, a little signage may go a long way.

- Signage promoting that you have homes for sale
- Signage for directions to your office
- Clearly marked parking area

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Guest Authority

Repossessing lenders must pay community lot rent

By William J. Perrone, *Dykema*

On February 3, 2009, the Michigan Court of Appeals upheld a circuit court ruling requiring Green Tree Servicing to pay manufactured home communities lot rental fees for homes it repossessed and left on site in the communities.

In the case, Green Tree repossessed numerous homes in several manufactured home communities and then refused to pay lot rent even though Green Tree clearly received a benefit from leaving them in the community. Although there was no written lease or contract to pay lot rent, the Court found that there existed “an implied-in-fact contract requiring [Green Tree] to pay lot rental fees on repossessed homes.”

That “contract” was properly deduced from the conduct of the parties, i.e., whether “reasonable men in a like situation as those who received and are benefitted by the service naturally would and ought to understand and expect compensation to be paid.”

In this case, the court found evidence that most repossessing entities do pay lot rent to communities and that Green Tree had in past paid lot rent. In addition, by leaving the homes on site in the community, Green Tree avoided the expenses of removal and storage at an off-

site location. The Court concluded that:

“It is simply not reasonable to conclude that [Green Tree] expected [the Community] to store the repossessed home . . . free of charge. The trial court did not err in concluding that the actions of the parties established an implied-in-fact contract.”

Interestingly, however, the Court did not find a similar implied contract for late fees and maintenance (e.g., lawn mowing) fees stating that: “These are not the types of fees that one would automatically assume would ‘come with the territory’ of leaving a home in a community.”

Based on this Court of Appeals Opinion, communities would be well within their rights to insist on lot rental for repossessed homes and, if not paid, to seek compensation from the repossessing lender on the basis of an “implied-in-fact” contract.

Note: This case is an “unpublished” opinion, meaning it lacks binding precedential effect, but is none-the-less persuasive authority.

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Risk tip: Choose the right insurance professional

Selecting the right insurance agent is the number one factor that determines if you have the right coverage and pay the right price for your insurance coverage. Yet, it always amazes me that buyers try to buy insurance based on premium prices and are disappointed year

after year with the results. They don’t know which policy to buy for the right coverage, and they can’t get good advice on the differences between offers. It reminds me of the famous Einstein quote, “. . . doing the same thing over and over again and expecting different results.”

Think of your agent selection in the same way you select your accountant. Don’t go for the cheapest; go with the professional who you think will do the best job and follow the right IRS guidelines. You wouldn’t think of using three

Risk Management

Employment Hiring

Prior to 2005, an employer could write to the Workers' Compensation Agency (WCA) and request workers compensation claim information about a prospective employee. In that year a mysterious "glitch" in their computer back up routine resulted in a loss of many records. At that time, letters requesting this type of information were no longer processed.

Checking with the records bureau, we were advised that not all records were lost, and that some had been recreated from paper files. In addition, new records have been recorded since that date. Requests for information will be honored but are now complicated by politics. Now in order to obtain the records, the employer must refrain from asking for workers compensation claim information and reference the Freedom of Information Act.

Advise your employer to address the letter to the following:

Workers' Compensation Agency
Department of Energy, Labor and Growth
State of Michigan
7150 Harris Drive
PO Box 30016
Lansing, MI 48909

The letter should request that under my rights under the Freedom of Information Act I respectfully request copies of all forms contained in the Worker's Compensation file of Employee Name, Social Security No.

By attachment, the letter should include an authorization from the employee giving the prospective employer permission to request and obtain this information.

The letter can be sent only after an offer is made, and before employment begins. There is a very good chance the agency will not be able to respond during this time period. However, misrepresentation on an employment application (as in "I have never made a claim on a Workers' Compensation policy") is considered grounds for termination.

accountants and later choosing which tax return to submit to the IRS. Too much work with no gain!

The right agent will be able to best represent you to underwriters due to their specific experience in your industry. If they're true experts in their fields, they

will have access to all the key players and can focus on steering you toward the best products for your needs. Once you choose the right advocate agent to procure your coverage, sleep well knowing you are paying the right price to get the right coverage.

Claim Reports

Recent claims review

- Mechanical failure of a lift station—\$8,500
- Weather related—snow claims: A large amount of claims were filed this snowy year. Most involved hitting parked vehicles while plowing.
- Discrimination: A minority resident claims the community management was forcing her to maintain her home and yard to a higher standard than the rest of the residents. Claim filed under the EPLI/Third policy police we now offer. Reserve \$10,000.

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Personal Insurance

Personal Insurance

Personal umbrellas

Most of you now carry commercial umbrellas. They provide added security of higher limits for when something really goes wrong. Now some of our carriers will include personal umbrellas for owners and officers. A personal umbrella provides that same security of higher limit for lawsuits outside of business operations. Please allow us to review all your commercial and personal insurance needs. Working together we can develop and coordinate your insurance into a secure coverage portfolio.

Marketing Corner *Continued from page 1*

Remember, you may be dealing with people who have never been in a manufactured housing community before. Want a little test? Invite a friend to your community and ask him

or her to drive to your office. Don't give directions. If they hesitate at all, you have created uncertainty, and that's never a good way to start a sale.