

Maclaren Wins Suit Claiming Ace Policy Was Wrongly Scrapped

By **Juan Carlos Rodriguez**

Law360, New York (November 07, 2012, 4:22 PM ET) -- A New York federal judge on Monday ruled Ace American Insurance Co. had improperly canceled the policy of English stroller maker Maclaren, which sought coverage for product liability claims, because the broker who collected the premium but didn't give it to Ace was acting as the insurer's agent.

Mclaren Europe Ltd. had paid retail broker Indebir Sahni to renew an existing policy in 2006, but Sahni never remitted the payment to Ace, which then canceled the policy. The stroller company, which sued Ace for coverage, said it faced about \$2 million in product liability claims that should have been covered under the policy but weren't because of the problem.

According to U.S. District Judge Harold Baer Jr.'s order granting Mclaren's motion for summary judgment, Ace must be charged with receipt of the premium because Sahni, who used New York-based wholesale broker Program Brokerage Corp. to negotiate and obtain the renewal from Ace, was acting as the insurer's sub-agent in the transaction.

"PBC was an agent of Ace for the limited purpose of receiving on Ace's behalf the payment of any premium which was due on the policy issued at PBC's request," Judge Baer said. "The moment PBC delivered the 2006 policy to Sahni, Sahni was a agent of Ace and could receive the premium on Ace's behalf."

The insurer claimed its policy with Maclaren was terminated in full compliance with the agreement's provisions and appropriately under English law, which it says should apply in the case. The policy provided coverage for occurrences and claims outside of the U.S.

Though under English law, Sahni could not have received the premium on behalf of PBC or Ace, the judge said New York law should apply.

"The insurance policy here covers insureds in England and Hong Kong and risks in Europe and Hong Kong. Ace's silence with respect to China's interest speaks volumes. This confirms for me that the interests at stake are less about the construction of the policy than they are 'the authority of the New York-based brokers that procured the policy,'" he said.

He noted that Ace, a domestic insurer doing business out of New York, sought to have foreign law apply to a contract where foreign entities came here specifically to use the services of New York brokers.

He said under New York law, Mclaren's prepayment of the renewal premium to Sahni was charged to Ace at the moment PBC delivered the policy to Sahni.

"When an insurer gives a policy to a broker for delivery to the insured, the insurer in effect extends credit to the broker, and the broker is thereby held to be an agent of the insurer for

the purpose of the payment of the premium on that policy,” Judge Baer said.

He concluded that Ace had vested PBC with the authority to receive the premium on behalf of Ace.

According to the judge, the New York state Insurance Department says insurers must accept payments of premiums to a broker as equivalent to receipt by the insurer, even if the insurer had no direct dealings with such broker.

ACE is represented by Joseph K. Powers, J. Gregory Lahr and Thomas R. Orofino of Sedgwick LLP.

Maclaren is represented by Paul S. Hugel of Clayman & Rosenberg LLP.

The case is Maclaren Europe Ltd. v. Ace American Insurance Co., case number 1:11-cv-04688, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Martin Bricketto. Editing by Kat Laskowski.

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