The MaritimeAdvocate online
www.avoarchive.com

Issue 708

November 29, 2017

Procuring a Policy of Insurance

The latest case note to reach us from Jason Minkin is J & M Pile Driving, LLC v. Chabert Insurance Agency, LLC, No. 2017-CA-0126, 2017 WL 4816909 (La. Ct. App. Oct. 25, 2017), which is a recent Louisiana case finding no liability on the part of an insurance agent for failing to procure marine insurance cover for a vessel even though the insurance application had been submitted for quote and the certificate of insurance issued to the policyholder. The authors of the note are Jason P. Minkin, Jonathan A. Cipriani and Katherine A. Martin

On September 21, 2010, the M/V Lil Cherie sank. The owner of the vessel was sure that it was insured under a P&I and hull insurance policy. But it wasn't. The case is an important reminder that completing an insurance application does not mean that cover is bound, even where the agent issues a certificate of insurance.

The insurance agent procured P&I and hull cover for a barge owned by the client. The client subsequently purchased a second vessel which was added to the existing cover after the client received a quote and paid an additional premium. The client later purchased a third vessel, which is the subject of this dispute.

According to the client, it completed an insurance application with the agent for the third vessel. The agent submitted the client's application to a marine insurance broker, who sent the application to its underwriter. The agent allegedly informed the client that the vessel would be an add-on to the existing cover and was insured after the application was submitted to the marine insurance broker.

The agent, however, offered a much different story. According to the agent, he never told the client the vessel was insured, that when a client requests marine insurance cover on a vessel, the client, such as the client here, must fill out an application which is then submitted to the underwriter for a premium quote. The agent explained that he did not have binding authority to quote the cover. He also explained that the quote would not be binding until received from underwriter and the premium is then paid. Here, it turns out the agent contacted the marine insurance broker several times between the date the application was completed and when the vessel sank in order to ask for an update on receiving the quote, but a quote was never received.

The trial court found that the agent did not advise the client that vessel was insured, that the agent processed the insurance application in a timely manner, and that the agent promptly sent the information to the underwriter for a quote, which is what he was obligated to do. The trial court concluded that the agent used reasonable diligence to procure cover for the vessel and did

not breach his duty as an insurance agent despite the fact that he did not promptly notify the client that he failed to obtain insurance.

A 2-1 majority of the Louisiana appellate court affirmed the trial court's decision. The appellate court determined the agent was not responsible for the client's losses based on a failure to use reasonable diligence to place the insurance or to promptly notify the client it failed to obtain the cover.

The client argued that it should be entitled to recover against the agent on a detrimental reliance theory because it relied on the agent's alleged assurances that the vessel was insured. This argument was rejected by the appellate court as the court had already found that the agent did not tell the client that the vessel was insured, and the client was aware that without a quote and payment of premium, the vessel was not insured. The appellate court also found that the client could not have reasonably relied upon the certificate of insurance because the certificate, unlike the binder, contained a disclosure that it was issued for informational purposes only and did not amend, extend, or alter the policy's coverage.

One of the appellate court justices, Judge Jewel Welch, disagreed with the majority's decision. Judge Welch found compelling the fact that the agent failed to inform the client that he was unable to get an insurance quote, that he never informed the client it did not have cover, and issued certificates of insurance indicating the vessel was insured, when it was not. According to Judge Welch, an unsophisticated person would believe the vessel was insured and, as such, the agent should have been liable for the resulting losses.

The takeaways from the case are: (1) an application for insurances did not instantly bind the cover; (2) the client could not rely on the insurance application or certificate as evidence of cover; and (3) without a quote and payment, there was no justification to rely on the previous conduct of the agent.