Negligence Law Section

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"Insurance Coverage Advisor"

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INSURABLE INTERESTS

As a general rule, Michigan courts lack the power to refuse enforcement of an unambiguous insurance contract on the basis of public policy. It is a "bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent . . . a contract in violation of law or public policy." Rory v Continental Ins Co, 473 Mich 457, 469 (2005). The Rory decision also made it clear that "the explicit 'public policy' of Michigan is that the reasonableness of insurance contracts is a matter for the executive, not judicial, branch of government." Id, at 476. Thus, an insurance contract approved by the insurance commissioner could not be invalidated on public policy grounds by the court.

Perhaps the most prominent exception to this general rule is the long-standing public policy against enforcing insurance contracts where the insured lacks an "insurable interest" in the property or risk at issue. Under Michigan Law, an insured must have an insurable interest to support the existence of a valid insurance policy, and the insurable interest must be that of the named insured. Corwin v DaimlerChrysler Ins Co, 296 Mich App 242, 257-58 (2012). This is not a matter of statutory or contractual interpretation, but purely a product of common law public policy that has prevailed since the early days of our judicial system.

Historical Development

The premise underlying the public policy requiring an insurable interest is that we purchase insurance to protect our own interests from risks, not to bet on the misfortunes of others. As Justice Cooley explained: "A wager policy, that is to say, a policy upon a risk in which the insured has no interest is void, for the reason, among others, that it holds out continuously a strong temptation to the commission of crime in order to cause the loss upon which the insurance money is made payable." O'Hara v Carpenter, 23 Mich 410, 416-17 (1871). Therefore, under the "fundamental principles of insurance," a person must have an insurable interest before he or she can insure, and a policy issued without such an insurable interest is deemed void as a matter of

public policy. Agricultural Ins Co v Montague, 38 Mich 548, 551-52 (1878). However, the exact nature of the required insurable interest is flexible:

An insurable interest does not, of necessity, depend upon ownership of the property. It may be a special interest entirely disconnected from any title, lien, or possession. If the holder of an interest in property will suffer direct pecuniary loss, by its destruction, he may indemnify himself therefrom by a contract of insurance. The question is not what is his title to the property, but rather, would he be damaged pecuniarily by its loss. If he would, he has an insurable interest. That interest may be derived by possession, enjoyment, or profits of the property, security or lien resting upon it, or it may be other certain benefits growing out of or dependent upon it. Crossman v American Ins Co, 198 Mich 304, 308-11 (1917). Thus, "any person has an insurable interest in property, by the existence of which he will gain an advantage, or by the destruction of which he will suffer a loss, whether he has or has not any title in, or lien upon, or possession of the property itself." Id, quoting Harrison v Fortlage, 161 US 57, 65 (1896).

Contours of the Public Policy

Because the insurable interest requirement is a matter of public policy, not black letter law, it remains flexible and often depends on the specific facts of a particular case. The determination of whether an insured has an insurable interest generally applies when the insurance is purchased, not necessarily when a claim is made. Morrison v Secura Ins, 286 Mich App 569, 573-75 (2009). A non-owner of property clearly has an insurable interest if the loss of the property would cause a "direct pecuniary loss," as in the case of a gas station mart that did not actually own the gas pumps it relied upon for income. A B Petro Mart, Inc v Ali T Beydoun Ins Agency, Inc, 317 Mich App 290, 298-301 (2016). And a parent may have a an insurable interest in protecting "his or her child's welfare, financial or otherwise." Morrison, 286 Mich App at 573. In a partnership, a partner cannot insure in his or her own name the interest of the co-partner. Peoria Marine & Fire Ins Co v Hall, 12 Mich 202, 210-11 (1864). This does not prevent a partner from insuring his or her own interest in the partnership for the benefit of a co-partner.

Only the insurer has standing to challenge the existence of an insurable interest. Hicks' Estate v Cary, 332 Mich 606, 612, 52 NW2d 351 (1952). However, the insurer must beware time limits that may be imposed by an incontestability provision or statute of limitations. Bogacki v Great-West Life Assurance Co, 253 Mich 253, 256-57 (1931).

Finally, several cases have raised the question of whether the insurable interest requirement should apply to liability policies. The public policy concerns about avoiding "wager" policies "are not implicated in the case of liability insurance, since the holder of the insurance cannot collect cash on the policy." Universal Underwriters Group v. Allstate Ins Co, 246 Mich App 713, 724-30 (2001) (finding that the insurable interest requirement did apply to liability policies based on precedent, but that the purchaser of an automobile had an insurable interest where she obtained a binder for insurance before her purchase of the vehicle was completed).

Conclusion

The precedent established by these cases makes clear that the adequacy of the insured's interest in the property or risk to be insured involves a fact-specific inquiry and may vary based upon the nature of the insurance benefits at issue. The practitioner faced with this issue will need to develop the detailed facts surrounding the purchase of the insurance in context. Did the insured have any interest in the purchase of the insurance, pecuniary or otherwise, at the time of purchase? Is there a time limitation such as an incontestability provision involved in the analysis? Does the situation fit within the purpose of the public policy prohibiting wager policies? If the coverage does not fit within the wager policy framework, as in the case of liability insurance, should there be a challenge to the applicability of the public policy concerns to the insurance coverage at hand, particularly given the edicts of Rory? Careful attention to these issues early in a case can prevent calamity later.

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