

Eleventh Circuit Reverses Dismissal Of Negligent Procurement Claims Against Brokers, Notwithstanding Ruling That Policy Was Void

05.27.21



(Article from *Insurance Law Alert*, May 2021)

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The Eleventh Circuit ruled that a Georgia district court improperly dismissed a policyholder's negligent procurement claims against insurance brokers, ruling that such claims were not precluded by a finding that the insurance policy was void ab initio. *Gen. Star Indem. Co. v. Triumph Hous. Mgmt., LLC*, 2021 WL 1921851 (11th Cir. May 13, 2021).

General Star Indemnity sought to rescind a policy issued to Triumph, a property management company, based on alleged misrepresentations in the application. Triumph filed a third-party complaint against two brokers, alleging negligent procurement. In particular, Triumph alleged that it requested blanket coverage for its structures, but instead was issued scheduled coverage. Triumph and General Star Indemnity reached a settlement, and in a consent order, the court dismissed all claims between those two parties and declared the policy void ab initio. The brokers moved to dismiss Triumph's third-party claims, which a Georgia district court granted. The Eleventh Circuit reversed.

The Eleventh Circuit rejected the brokers' argument that the appeal was moot based on the district court's order declaring the policy void ab initio. The court explained: "Whether [the brokers] procured inadequate coverage or no coverage at all, a live controversy remains as to whether they were negligent for failing to procure the coverage that Triumph requested." In addition, the court rejected the brokers' contention that Triumph's third-party claims must fail because there was no finding of liability against the first-party defendant and because third-party claims are necessarily derivative of first-party claims.

The Eleventh Circuit also ruled that Triumph sufficiently alleged its negligent procurement claims, notwithstanding its failure to read the policy. The court explained that while an insured's failure to exercise ordinary diligence typically precludes a negligent procurement claim, an exception exists where, as here, the insured allegedly did not receive a copy of the policy and thus could not assess any potential discrepancies between the coverage it requested and the coverage actually provided. In such instances, "the pivotal question is whether the remaining facts alleged in Triumph's third-party complaint support an inference that Triumph exercised ordinary diligence to find out the terms of the policy." Noting that the district court failed to consider that question, the Eleventh Circuit reversed the dismissal of the claims. The Eleventh Circuit also ruled that Triumph should be permitted to amend its third-party complaint to include allegations that it sought, but did not receive, information about the scope of coverage under the policy from the brokers after it was issued.

