

THE
NATIONAL LAW REVIEW

When Is a Claim for Rescission Ripe for Adjudication?

Wednesday, March 20, 2019

Once in a while, an insurance company learns that its insured did not accurately portray its risk when applying for the insurance policy. In many cases, the insurance company will just cancel the policy, but sometimes the insurance company will want to rescind the policy so that no claims can be filed for the period between policy issuance and cancellation. If an insurance company learns that the application was not accurate, and decides to rescind the policy, can it bring an action in court for rescission if there are no claims pending or threatened? The Second Circuit recently addressed this issue.

In [*United States Underwriters Insurance Co. v. Orion Plumbing & Heating Corp.*](#), No. 18-2286-cv (2d Cir. Mar. 18, 2019) (Summary Order), a policy was issued in 2012 and was cancelled later that year for non-payment of premium. While the policy was in-force, a firefighter was injured during a fire. The firefighter sued the property owner for negligence nearly three years later and the property owner impleaded the policyholder. While the case ultimately was dismissed against the property owner and the policyholder, the insurance company brought suit against the policyholder to declare that it had no duty to pay the policyholder for claims asserted by the property owner and to rescind the insurance policy for material misrepresentations in the application process.

Although the policyholder defaulted on the lawsuit, the district court dismissed the case without prejudice for lack of subject matter jurisdiction. The court concluded that because “an attenuated chain of contingencies would have to occur” before the policyholder could claim coverage under the policy, the insurance company’s claim for rescission was not justiciable. On appeal, the Second Circuit vacated the dismissal of the rescission claim and remanded it back to the district court to address its merits.

The circuit court disagreed with the district court’s determination that the rescission claim failed to present a “case or controversy” as required by [Article III](#) of the Constitution. The court noted that rescission claims may be justiciable even absent a pending claim. The court found that the insurance company had adequately alleged facts establishing a live case or controversy. The facts alleged in the complaint, said the court, describe an injury, in fact, sufficient to establish a concrete case or controversy. The insurer had alleged a reasonable likelihood that it will face liability to the policyholder, at minimum, based on its duty to defend, and could face liability based on the restatement of the underlying action or any further litigation involving the policyholder. Because the insurer had alleged misrepresentations by the policyholder induced the insurer to issue the policy, the potential for rescission would eliminate the insurer’s indemnity and defense obligations. These allegations were sufficient to raise an actual controversy about the appropriateness of rescission.

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