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Golf Course Sunk by Faulty Follow-Through in Hole in One Insurance Dispute

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Article By Michael Cardozo
L. Robert Batterman Robert E. Freeman
Howard L. Ganz Wayne D. Katz
Joseph M. Leccese Proskauer Rose LLP
Three Point Shot Entertainment, Art & Sports
Insurance Reinsurance & Surety
9th Circuit (incl. bankruptcy)

As an update on a previous article published in the Summer 2016 edition of *Three Point Shot*, Old White Charities ("OWC" or "Old White") – the nonprofit group responsible for the Greenbrier Classic in White Sulphur Springs, West Virginia – has found itself stuck in the rough after a lengthy legal battle with its insurance underwriters. To recap, when OWC hosted the Classic back in 2015, it promoted a hole in one contest on the 18th hole. OWC promised to pay each fan seated in the grandstands $100 for the first hole in one and $500 for the second (and even $1,000 for the third). OWC attempted to avoid any hazards by obtaining an insurance policy totaling $2,300,000 for the contest. Exciting for fans, but not for OWC, two PGA golfers managed to shoot aces on the 18th hole during the tournament, requiring the owner of the Greenbrier to pay out roughly $200,000 in prize money.

OWC filed a demand for $900,000 in insurance coverage on the policy, but faced a major setback when its claim was denied. The underwriters subsequently brought suit for a declaratory judgment of noncoverage concerning the hole in one prize indemnity policies because OWC allegedly made incorrect statements in its application for coverage and otherwise deviated from the policy's provision that the 18th hole be at least "170 yards from the tee" for the covered hole in one contest. (*Talbot 2002 Underwriting Capital LTD v. Old White Charities, Inc.*, No 15-12542 (S.D. W. Va. filed Aug. 19, 2015)). The main driver of the suit was that OWC had breached the minimum yardage requirement of the policy when the 18th hole on the day in question played at 137 yards, far shorter than OWC's alleged approximation of 175 yards. The underwriters claimed that the application for the insurance policy contained an actual minimum-yard requirement of 150 yards, which was later negotiated to 170 yards in the final policy binder. The underwriters also argued that OWC did not pay the policy premium prior to a July 1 deadline.

Hoping they could remain in contention, OWC filed a counterclaim against the underwriters and a third-party complaint for breach of contract, bad faith, negligence and fraud against several more underwriters and brokers involved in the transaction. (*Talbot 2002 Underwriting Capital LTD v. Old White Charities, Inc.*, No 15-12542 (S.D. W. Va. filed Sept. 11, 2015)). OWC argued that it was unaware that the 170-yard minimum was added to the policy. It also noted that it had no control over the course's yardage (as the PGA was responsible for pin placements), and that it had placed language in the application that specified the 18th hole played at an "average" of 175 yards. After some of the underwriters filed motions to dismiss, the court let the bad faith claim fade, but determined that the underwriters could still be on the hook for the remaining breach of contract and related claims.

The legal proceedings continued until early January, when the court finally granted the underwriters' motions for summary judgment and dismissed OWC's counterclaim and third-party complaint. (*Talbot 2002 Underwriting Capital LTD v. Old White Charities, Inc.*, No 15-12542 (S.D. W. Va. filed Jan. 6, 2017)). Ultimately, the minimum yardage requirement proved to be the albatross that prevented OWC from obtaining relief. While there may have existed a discrepancy between the 150-yard requirement in the application and 170-yard requirement in the final policy binder, the court found "there is no dispute that the 150-yard minimum in the application was known and agreed to by Old White and its agent." Moreover, the court rejected the arguments that the underwriters' actions created a reasonable expectation of coverage, ruling that OWC was aware throughout the negotiations that the underwriters wanted a minimum yardage requirement, and OWC "provided no evidence of any ambiguities, acts or statements by the Plaintiffs' agents that would have created a misconception." The court then dismissed OWC's breach of contract claims against the underwriters on similar grounds.

Although it may seem par for the course, the court's final judgment serves as an important reminder for insureds that careful review of material insurance policy provisions is essential prior to hosting any covered event. While OWC may have had the foresight to purchase insurance for not one but two holes in one on the same hole during the same competition (even if the odds of such an occurrence appear to be roughly 32,000 to 1), its failure to abide by the policy provisions means that OWC and the Greenbrier are now the ones left carrying the bag … and the bill.

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