



LESSONS LEARNED¹

Vacant Building Policies and the Need for Proof of Timely Delivery of Policies to the Insured

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Allegations of Insured:

On November 11, 2017, the insured met with the agent to discuss placing commercial insurance for a warehouse. The insured was a personal friend of the agent and, as such, the agent had personal knowledge that the property was vacant during the application process. The commercial insurance application was completed and submitted. The insured claimed to have disclosed to the agent that the property had been vacant since May of 2017. When the agent completed the application, he noted in the remarks section of the application that “building is currently vacant. Tenant moved out 11/1/17. Insured is actively looking for a new tenant.”

¹ “Lessons Learned” is a recurring article authored by David A. Barfield, based on real errors and omissions cases in Mississippi. David has represented insurance agents for over 30 years. The names of all parties and all case citations have been omitted to preserve anonymity of the parties.

On January 25, 2018, the insured suffered a water damage loss at the insured premises. The insured was advised that there was no coverage because the damage was caused by sprinkler leakage due to freezing temperatures. The policy contained the Standard Loss Conditions - Vacancy Provisions, a Vacancy Permit and a Sprinkler Exclusion. Because of the denial of the claim based on these vacancy provisions, the insured filed a lawsuit against the agent and the insurer.

Facts Giving Rise to the Litigation:

The agent agreed that he met with the insured in November 2017 and completed an application for a vacant building policy on the warehouse. The agent denied being told that the property had been vacant since May of 2017, but was advised that it had recently become vacant and the insured was actively looking for a new tenant. Nonetheless, because the property was vacant, the agent correctly procured a vacant building policy.

As stated above, on January 25, 2018, the insured property suffered a loss due to a sprinkler head leaking as a result of freezing temperatures. There was no heat on in the building. The sprinkler head released water throughout the building. The policy contained a Standard Loss Conditions - Vacancy Provisions. The policy also had a Vacancy Permit endorsement. The Vacancy Permit provided coverage for the insured's vacant premises for all covered causes of loss other than vandalism and sprinkler leakage. The policy also contained a separate Sprinkler Leakage Exclusion.

The agency received the insurance policy on November 28, 2017, but did not mail it to the insured until January 30, 2018, five days after the loss. Under Mississippi law, an insured has a duty to read their insurance policy and, even if they choose not to do so, they are charged with the knowledge of the terms and conditions of the policy. However, absent proof that the policy was delivered to the insured, this rule does not apply. There was an insurance proposal which was submitted to the insured that clearly listed both a vacancy permit and sprinkler leakage exclusion; however, the terms and conditions of those forms were not set forth in the proposal.

What Happened?

Out of the blue, we received an email from counsel for the insurer advising that it had decided to settle the claim with the Plaintiff and obtained a release on its behalf and on behalf of the agent and agency. Such an action by an insurer is very rare in these times.

Lessons Learned:

- **Always** promptly deliver the insured their entire insurance policy.
- **Always** create documentary evidence that you have delivered the insured their insurance policy. Having this evidence is critical to the defense of most errors and omissions claims.

- Losses to vacant buildings are the source of a good number of lawsuits. Insureds typically think they are getting the same coverage as an occupied building, but that it is just more expensive because it is vacant. When insuring vacant buildings, let the insured know that coverage for vacant buildings is typically not as broad as coverage for occupied buildings. Document that discussion. If the policy is delivered to the insured by the agent, document that delivery. It is a very good practice to advise the insured, in writing, that they should read their insurance policy to understand what is covered and what is not covered.