

Massachusetts Appeals Court Clarifies Sufficiency of Notice of New Exclusions in Renewal Policies

Insurers regularly add new provisions to renewal policies. Many states require insurers to give the insured advance notice of a new exclusion or limitation on coverage added to a renewal policy. Absent adequate notice, the new exclusion will be disregarded. The Massachusetts Appeals Court recently addressed what constitutes sufficient notice of the addition of an exclusion for violations of the Telephone Consumer Protection Act (TCPA) and held that the insurers provided timely and sufficient notice of the new exclusion.

In *Addison Automatics, Inc. v. The Netherlands Insurance Company, Case No. 20-P-225*, Addison Automatics, sought coverage for a class action alleging TCPA violations that resulted in a settlement in excess of \$15,000,000. The trial court agreed with Addison that the new TCPA exclusion was not enforceable under New Jersey law (where the policies were issued) because Addison's primary and umbrella insurers failed to provide sufficient notice of the exclusion when they added it to Addison's renewal policies. The Appeals Court reversed in a decision providing guidance on what does and does not constitute timely and sufficient notice.

On timeliness, the Court pointed to a New Jersey statute (N.J.A.C. 11:1-20.2(c)) requiring insurers to notify insureds of changes in policy terms between 30 and 120 days before the date the premium is due and concluded the insurers provided timely notices 74 days in advance of that date. The Court also rejected Addison's argument that a different statute (N.J.A.C. 11:1-20.2(b)) governing advance notice of non-renewal should apply because a renewal policy with a material change in conditions should be treated as a nonrenewal. In reaching that holding, the Court noted that Addison's argument might prevail under the law of other jurisdictions, but not under existing New Jersey precedent.

The Appeals Court addressed the sufficiency of the notice in more depth. The Court noted that in *Skeete v. Dorvius*, 184 N.J. 5 (2005), the New Jersey Supreme Court held that insurers must "fairly convey" a reduction in coverage and concluded that an insurer failed to provide sufficient notice when it buried its new step-down provision for an automobile insurance policy reducing the limits for some insureds in undifferentiated text in a "passel of two hundred documents" that failed to call the insured's attention to the reduced limits.

In contrast, Addison's insurers flagged the TCPA exclusion in a slip notice that preceded the declarations page and used bold and underlined headings to highlight the TCPA exclusion. The Court held that was sufficient even though the notice flagging the new TCPA exclusion was one of a package of numerous other slip notices. The Court also noted that Addison was a sophisticated actor, not the "average policyholder," like the individual auto policyholder in *Skeete*.

Addison provides more clarity on what qualifies as sufficient notice of new exclusions in renewal policies. Insurers regularly add new exclusions to policies as new exposures emerge, such as new virus and communicable disease exclusions in the wake of the COVID pandemic. It, therefore, is important for insureds and insurers to review the "passel of documents" that accompany or precede renewal policies to identify new limitations on coverage. And, when faced with a disclaimer based on a new exclusion, insureds should determine whether notice of the exclusion satisfied the requirements of the governing jurisdiction.