

Rescission Coverage Update

Plunkett Cooney PC

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Rescission – Illinois Law

Grinnell Mut. Reinsurance Co. v. S.B.C. Flood Waste Solutions, Inc. No. 23-1847, --- F.4th ---, 2024 WL 3886664 (7th Cir. Aug. 21, 2024)

The U.S. Court of Appeals for the Seventh Circuit affirmed the ruling of the U.S. District Court for the Northern District of Illinois – Eastern Division that Grinnell Mutual Reinsurance Company (Grinnell) was entitled to rescind the commercial general liability and auto policies issued to S.B.C. Flood Waste Solutions (SBC Flood) due to material misrepresentations by SBC Flood on the insurance application.

This matter arose due to a family dispute over the use of the family’s last name in waste collection and hauling services businesses operating in the Chicago area. Brian Flood and his two sons, Chris and Shawn, worked in sales at Flood Brothers Waste Disposal Company (Flood Brothers) until the end of 2017. Flood Brothers was founded by Mike Flood, who is Brian Flood’s father and Chris and Shawn’s grandfather.

While working for Flood Brothers, Chris began to operate a side business, Flood, Inc., which provided waste collection and hauling services similar to Flood Brothers. After a family dispute arose in October 2017 regarding the use of the family name by Chris in operating Flood, Inc., Chris, Shawn and Brian’s employment with Flood Brothers ended. Thereafter, the three set up a new company called Flood Waste Solutions, Inc. They later added “SBC” to their company name. During this time, the Flood Brothers company sent cease and desist letters to SBC Flood asking it to stop using the Flood name. In turn, Shawn, Brian and Chris retained attorneys with Chris’ attorney responding to the cease and desist letter “for settlement purposes” contesting Flood Brothers’ assertions.

While the family feud continued, SBC Flood applied for insurance on Feb. 9, 2018. On the insurance application, SBC Flood indicated that it had no claims or losses, regardless of fault and whether or not insured, or occurrences that may give rise to claims. SBC Flood did not disclose on the application the issue regarding the use of the Flood name or the settlement discussions regarding the same. SBC Flood also indicated on the application that its principals had no other business ventures for which coverage is not requested, despite Chris’ company, Flood, Inc., which continued to operate without insurance. Relying on these statements and others in the application, Grinnell issued a commercial general liability policy and an auto policy to SBC Flood.

In May 2018, Flood Brothers sued SBC Flood in Illinois state court alleging improper and unfair use of the Flood name in connection with the waste collection and hauling services in the Chicago area (underlying lawsuit). SBC Flood sought defense and indemnification coverage from Grinnell for the underlying lawsuit. Grinnell in turn filed a declaratory judgment action in the U.S. District Court for the Northern District of Illinois -- Eastern Division, seeking a declaration that it had no duty to defend SBC Flood in the underlying lawsuit and that it could rescind its policies due

to material misrepresentations on the insurance application. At the close of discovery and after the district court ruled that the underlying lawsuit fell within the scope of the policy, Grinnell moved for summary judgment on its policy rescission claim. The district court granted Grinnell's motion, which was upheld by the appellate court.

Applying the objective test per Illinois law, the appellate court determined that SBC Flood's failure to disclose the dispute regarding the use of the Flood family name and the existence of Flood, Inc. were material misrepresentations. The appellate court disagreed with SBC Flood's argument that the dispute or occurrence that may give rise to a claim involved only Flood, Inc. and not the use of the Flood family's last name in general. The appellate court also disagreed with SBC Flood's argument that a finding must be made as to whether SBC Flood and Flood, Inc. operated as alter egos. As noted by the appellate court, the multiple material misrepresentations on the insurance application by SBC Flood did not require any alter ego finding. The rescission of the policy was upheld.

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