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INSURANCE AGENT HELD TO HAVE NO SEPARATE OBLIGATION TO NOTIFY INSURED OF CANCELLATION WHERE INSURER REQUIRED TO GIVE DIRECT NOTICE

An issue of concern for many insurance agents is whether an insured may seek to hold an agent liable for its failure to give an insured separate notice of cancellation, once an agent learns of an insurer's issuance of a direct notice of cancellation to the insured. While only a small number of judicial decisions currently address the subject, Maine's highest court has recently held that an insurance agent had no separate obligation to notify its insured customer when the cancelling insurance company gave its own independent notice of cancellation.

In Sunset Enterprises v. Webster & Goddard, Inc., 556 A.2d 213 (Me. 1989), Maine's Supreme Judicial Court held, in pertinent part, that the defendant agent, Webster & Goddard, was justified in assuming that the insured, Sunset Enterprises, was made sufficiently aware of the cancellation of a marine insurance policy by direct notice sent by the insurer, INA. The Sunset case involved a July, 1983 INA marine insurance policy procured by Webster & Goddard, an INA agent, on behalf of Sunset, the owner of a 52 foot yacht. The address of the sole insured, as specifically represented by Sunset and as indicated on the policy, consisted of a New Hampshire post office box.

Subsequent to the policy's issuance, Sunset allowed the post office box to lapse. No notice of the lapse, however, was given to either Webster & Goddard or INA. In March, 1985, due to Sunset's failure to produce an updated marine survery, INA sent a direct notice of cancellation by certified mail to the New Hampshire address, and Webster & Goddard received its agency copy of the notice. Although INA's notice was returned as undeliverable to INA, Webster & Goddard was apparently never made aware that INA's notice was not received by Sunset. In September, 1985, the yacht was damaged, and INA subsequently refused payment on the loss due to the March, 1985 cancellation of the policy. Sunset then brought suit against Webster & Goddard claiming, in part, that Webster & Goddard negligently failed to notify Sunset of the cancellation of coverage. The court held that where "an insurance company is required to give direct notice of cancellation to the

insured, as is the case here, the insurance agent is not liable for failure to notify, since he is justified in assuming that the insured would be made aware of the cancellation from other sources." The court therefore affirmed the trial court's ruling, dismissing Sunset's claim against Webster & Goddard.

The Sunset case sets forth at least one court's conclusion that an insurance agent may rely upon an insurance carrier's direct notice of cancellation as legally sufficient notice. It must be recognized, however, that the Sunset case represents only a single court's point of view, and that the development of predictable judicial guidelines in companion jurisdictions remains a slow and uncertain process. In addition, there is some indication however that the Sunset court may have reached a different conclusion if Webster & Goddard had been a broker instead of INA's agent.

There is, however, a lesson to be learned from Sunset: It appears that agents, with at least some measure of comfort, may rely upon the sufficiency of an insurer's direct notice to satisfy legal requirements concerning notice of cancellation. Considerable care should, nevertheless, be exercised by the agent to avoid giving information to its insured customer which may contradict information contained in an insurer's direct cancellation notice. Additionally, the agent should remain alert to communicate to the insurer any changes in the mailing address of the insured which may become known to the agent.

CONCLUSION

The Sunset decision represents a positive step toward extracting insurance agents from the quandry created when an agent may be simultaneously motivated to, on the one hand, give its own notice of a direct cancellation to an insured customer, and, on the other hand, to leave the terms, conditions, and execution of a direct cancellation solely to the insurer. Until such time as definitive precendent is established in New York, however, agents should follow a consistent practice in response to a direct cancellation: Either leaving the matter entirely to the insurer, or communicating the agent's advice with respect to the cancellation in a manner intended to supplement, and not contradict, information contained in the insurer's cancellation notice.

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