American Educational Institute, Inc.

CLAIMS LAW UPDATE

A SUPPLEMENT TO CLAIMS LAW COURSES IN CASUALTY, PROPERTY, WORKERS COMPENSATION, FRAUD INVESTIGATION AND AUTOMOBILE

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WHEN A HOME ISN'T A RESIDENCE PREMISES

[Ref: Homeowners: Property Coverages, Para.1.04]

A new homeowner purchased a homeowners policy to provide coverage for damage to his house. The house was properly identified in the policy declarations by its street address and the premium was paid. The insured was transferred by his employer, however, and he had to move his family to a new town. He still owned the insured house and checked on it from time to time, but neither he nor his family resided at the premises. When the house was damaged in a storm the insured filed a claim, but the insurer denied coverage because the house was not the insured's residence premises when the loss occurred. The insurer's position may or may not be correct depending on the facts of the claim and the language of the policy. Some policies require that the insured reside at the premises when a loss occurs, but some more recent policy endorsements require residency only at the inception of the policy.

RESIDENCE PREMISES

A typical homeowners policy provides first party property damage coverage for "the dwelling on the 'residence premises'" listed in the declarations. Since residence premises is a defined term, that definition is an important consideration in determining if the policy covers a given loss. The definition might state:

> "Residence premises" means:
>
> a. The one-family dwelling where you reside;
>
> b. The two-, three-, or four-family dwelling where you reside in at least one of the family units; or
>
> c. That part of any other building where you reside;
>
> and which is shown as the "residence premises" in the Declarations.
>
> "Residence premises" also includes other structures and grounds at that location.

This definition appears in all of the standard ISO homeowners forms. The AAIS forms contain similar policy language to define "described location," which is the equivalent of residence premises.

The key under this definition is that the named insured or spouse must reside in the house for it to qualify as the residence premises. Once the named insured or spouse no longer resides in the house, the house is no longer the residence premises. If the house does not qualify as the residence premises, the policy does not cover damage to the house.

Circumstances change. An elderly named insured may have to move into a nursing home. A named insured may be faced with a job transfer to another state. Once the named insured no longer resides in the house, it does not qualify for coverage under this homeowners form because it is no longer an owner-occupied dwelling. The majority of courts that have considered coverage disputes that involve the residence premises requirement in these policies have found the policy language to be clear and unambiguous, and have ruled in favor of insurers on the issue of coverage.

RECENT CASES

In *Gerow v. State Auto Property & Casualty Co.,* 2018 U.S. Dist. LEXIS 175007 (W.D. Pa. 2018), the court addressed a homeowners policy's residency requirement. The Gerow family moved to a house in Johnstown, Pennsylvania in 2007. In August 2015 Mrs. Gerow moved to Connecticut to take care of her mother. Mrs. Gerow was uncertain whether the move would be temporary. The couple's two youngest children accompanied their mother in the move. The Gerows also moved much of their personal property from the Johnstown house to Connecticut, and the youngest child enrolled in school in that state. Mrs. Gerow obtained a Connecticut driver's license to facilitate her child's enrollment. The couple maintained utility service to the Johnstown house, never considered selling or renting the house, continued to bank in Johnstown, and filed tax returns from that address. Mr. Gerow's employment required travel and he often commuted to Washington, D.C., sometimes staying overnight at a corporate apartment. Although he did not move to Connecticut, Mr. Gerow spent three to four days a week with his family in Connecticut. In comparison, he estimated that he was at the Johnstown house three to four times a month.

In January 2016 the Johnstown house was damaged when a water pipe burst and Mr. Gerow made a claim for the damage with State Auto. The policy defined residence premises as "the one family dwelling where you reside." State Auto determined that the Gerows were not residing at the Johnstown house and denied their claim. The Gerows sued for breach of contract. The Gerows argued that the policy language was ambiguous and that the insurer did not clearly state that coverage was contingent on the insured premises being the primary or only residence of the insureds. The court, however, agreed with the insurer that residency was a condition of coverage and that the policy clearly required that either one or both of the plaintiffs reside at the Johnstown house.

The court next considered the evidence of residency submitted by the Gerows. The court found that "resident" is an unambiguous word that requires "some measure of permanency or habitual repetition." A party's intent to return to the dwelling at some point is not determinative of residency. Courts consider a number of objective factors, such as where a person sleeps, eats, receives mail, and stores personal property. According to earlier case law, when a person lives in one place and sporadically visits or keeps property at another, the location sporadically visited is not his residence. The court held that it was clear Mr. Gerow did not reside at the Johnstown property. His visits to that property were to check on its status and he often continued on to Washington after checking the Johnstown house. He did not have a regular physical presence at the house and, as such, lacked "the touchstone of residency." His sporadic visits were not enough to create a genuine question of fact regarding residency. The court granted summary judgment to State Auto.

In *Banks v. Auto Club Group Ins. Co.,* 2015 Mich. App. Lexis 1270 (Mich. App. 2015), the evidence clearly showed that at the time a fire occurred there, neither the named insured nor his spouse were residing at the Clinton Township house listed on the policy. Auto Club denied the insureds' fire loss claim for that reason. The policy promised to cover the dwelling at the residence premises. Residence premises was defined as "the premises described in the declarations used as a private residence by you." Gilbert Banks gave a sworn statement that the insured dwelling was his legal residence and that he maintained a bedroom there as well as clothing. Gilbert testified that he resided at the Clinton Township house but was staying with his mother on the date of loss. He stated that he, his wife Vernetta, and a sibling took turns caring for his mother in Detroit. Vernetta also swore that she resided at the Clinton Township residence along with their son and the son's wife.

The court explained that for coverage to apply three elements must be proved. First, the dwelling must be the residence premises described in the policy declarations. This was clearly satisfied. Second, the property must be used as a private residence by the named insured or spouse. This was in dispute. Third, the dwelling must be a one-, two-, three-, or four-family dwelling. This too was satisfied. The issue to be decided was whether the "where you reside" language required the insured to actually physically reside at the house listed in the declarations. The court had previously held that the policy language stating that coverage was provided for the single family dwelling described in the policy and where you reside was not simply descriptive of the premises, but was a condition of coverage that required that the insured or spouse reside at the house on the date of loss. In addition, prior case law required that the insured or spouse actually reside at the premises to satisfy the "where you reside" requirement. Here there was no question that the insureds were residing at the Detroit property at the time of the fire. Neither insured resided at or occupied the Clinton Township house on other than a temporary basis. Gilbert testified that he had spent more than 95% of his time at his mother's house for the past five years and that Vernetta resided there with him. Other testimony proved that neither the named insured or spouse spent nights at the Clinton Township house because Gilbert's mother could not be left alone. Since the evidence proved that the insureds resided in Detroit on the date of loss, the court affirmed the grant of summary judgment to Auto Club.

The specific facts of a claim will influence a court's interpretation of the policy language. In *Skrelja v. State Automobile Mutual Ins. Co.,* 2016 U.S. Dist. LEXIS 79573 (E.D. Mich. 2016), the insured's house at Fantasia Drive sustained water damage after a pipe froze and burst. State Auto denied the claim based on the argument that Skrelja did not reside at the house on the date of loss and, therefore, the house did not meet the policy definition of a covered residence premises.

Skrelja filed suit against State Auto for breach of contract, arguing that he was residing at the house when the loss took place. The evidence established that the Fantasia Drive house listed on the policy had been bought in October 2013, five months prior to the date of loss, and was in need of significant renovation. Skrelja had moved some furniture and clothing into the house. On most days he spent several hours at the house making repairs and dealing with contractors. He teleworked from the house, utilities were connected, Skrelja installed a new furnace, and heat was maintained. He had not, however, changed the address on his driver's license, employment records, bank documents, credit cards, cell phone, or postal service to that of the Fantasia Drive house. In addition, Skrelja's wife lived with her parents during this time because she was pregnant and did not want to move into the Fantasia Drive house until the renovation was complete. Skrelja spent his nights at his in-laws' house and paid rent to them. On the basis of these facts, the insurer filed a motion for summary judgment, relying on previous cases in which the insured had moved out of the premises listed on the policy and did not reside there on the date of loss. The court contrasted those cases with these facts, and explained:

> Neither *Heniser* or *McGrath* answers the question raised in the present case. In both of those cases, the policyholders did not live at the insured premises at the time of the loss. In *Heniser*, the policyholder had sold the house and was not living there when

> the fire occurred. In *McGrath*, the policyholder had moved out of the house and had been living elsewhere for years when the water damage occurred. By contrast, in the instant case the policyholder was physically present at the insured location on nearly a daily basis, for "eight to ten hours a day," doing various things including cleaning, painting, meeting friends and contractors, eating, teleworking, exercising, and showering. Defendant does not point to any policy language, or to any case law interpreting the terms "dwelling" or "residence premises," to suggest that plaintiff was required, lest coverage be denied, to live solely at the Fantasia property, or to spend a certain minimum number of hours there on a daily or weekly basis, or to sleep there, or to eat particular meals there, or to have his mail delivered there, or to keep any particular amount of clothing or furniture there. The Court agrees with defendant that the policy language is not ambiguous because the Michigan courts have defined it: Plaintiff was required to reside at the Fantasia property in order for defendant's policy to afford coverage, and "reside" means he had to occupy the house and live there, be physically present there, and not use the house merely as a place of "temporary sojourn." Defendant has not shown that plaintiff was not living there, and plaintiff has shown the contrary. The evidence clearly shows that plaintiff was living both at the Fantasia property and the Monticello property at the time of the March 2014 loss, as he was spending his days at the former and eating dinner and sleeping at the latter. Defendant points to no authority suggesting that plaintiff may reside/live/dwell at only one house.

The court concluded by denying State Auto's motion and entering summary judgment for the insured.

In cases that involve this policy language, the key is that the insured must have some regular physical presence at the house to prove it was the residence premises. While evidence such as the address used by the insured or spouse to receive mail, or the address used for banking, or on a driver's license can be used to prove legal residency, without the named insured's or spouse's physical presence at that address, it might not qualify as a residence premises under the homeowners policy definition.

AMENDATORY ENDORSEMENTS

Many recent policies include language, by endorsement, that changes the definition of residence premises. This language makes it possible for an insured to maintain coverage on the dwelling listed in the policy after the named insured or spouse no longer resides there as long as the policy hasn't expired.

The new language might read:

11. "Residence premises" means:

    a. The one-family dwelling where you reside;

    b. The two-, three- or four-family dwelling where you reside in at least one of the family units; or

    c. The part of any other building where you reside;

    on the inception date of the policy period shown in the Declarations and which is shown as the "residence premises" in the Declarations.

The key is that the insured or spouse is required to reside at the dwelling on the inception date of coverage and not on the date of loss, as long as the date of loss is prior to the expiration of the policy period. If the policy renews prior to the date of loss and the insured did not reside at the dwelling on the renewal date, there would be no coverage. The dwelling would then not qualify as the residence premises under the policy definition.

CONCLUSION

Under the older policy language the "where you reside" requirement of the residence premises definition was considered clear and unambiguous. As illustrated by the *Skrelja* case, however, that doesn't necessarily require that the insured or spouse sleep at the premises as long as there is sufficient indicia that it was being used as the residence premises. As insurers adopt the more recent policy endorsements, it will be necessary to monitor court decisions that interpret this new language, although residency is less likely to be an issue. Keep in mind, too, that even if a dwelling satisfies the residence premises definition, coverage is still subject to limitations or exclusions applicable to situations in which the covered dwelling is vacant or, depending on the policy, unoccupied.