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Robert E. Corbin

November 22, 1988

Ms. Susan Gallinger, Director
Arizona Department of Insurance
801 East Jefferson
Phoenix, Arizona 85034-2217

Re: I88-116 (R88-005)

Dear Ms. Gallinger:

Your predecessor in office asked whether A.R.S. §§ 20-1631 to -1633 prohibit an insurer from reducing the limits of liability or coverage of a motor vehicle insurance policy upon renewal of the policy. We conclude that an insurer may not take such action unless at least one or more of the provisions of A.R.S. § 20-1631(B)(1) - (4) are applicable.

A.R.S. § 20-1631(B) provides:

No insurance company shall cancel or refuse to renew a motor vehicle insurance policy solely because of the age, race, color, religion, sex, national origin or ancestry of anyone who is an insured, nor shall any company issue a motor vehicle insurance policy in this state unless the cancellation and renewal conditions of such policy or the endorsement on such policy includes the following limitations pertaining to cancellation and renewal by such company. After this policy has been in effect for sixty days, or if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel or fail to renew the insurance afforded under (insert coverages) unless:

1. The named insured fails to discharge when due any of the obligations of the named insured in connection with the payment of premium for this policy or any installment of such premium.

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2. The insurance was obtained through fraudulent misrepresentation.

3. The named insured, any person who resides in the same household as the named insured and customarily operates a motor vehicle insured under the policy or any other person who regularly and frequently operates a motor vehicle insured under the policy:

(a) Has had his or her driver's license suspended or revoked during the policy period.

(b) Becomes permanently disabled, either physically or mentally, and such individual does not produce a certificate from a physician testifying to such person's ability to operate a motor vehicle.

(c) Is or has been convicted during the thirty-six months immediately preceding the effective date of the policy or during the policy period of:

(i) Criminal negligence, resulting in death, homicide or assault, arising out of the operation of a motor vehicle.

(ii) Operating a motor vehicle while in an intoxicated condition or while under the influence of drugs.

(iii) Leaving the scene of an accident.

(iv) Making false statements in an application for a driver's license.

(v) Reckless driving.

4. The insurance company is placed in rehabilitation or receivership by the insurance supervisory official in its state of domicile or by a court of competent jurisdiction.

(Emphasis added.)

The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature in adopting the legislation. Calvert v. Farmers Insurance Co. of

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Arizona, 144 Ariz. 291, 294, 697 P.2d 684, 687 (1985). The most reliable evidence of legislative intent is the language of the statute and, in the absence of a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive. State ex rel. Corbin v. Pickrell, 136 Ariz. 589, 594, 667 P.2d 1304, 1309 (1983). Turning then to the statutory language in question, it is our opinion that the legislature, by using the term "renew," intended to require an insurer to provide at least the same amount of coverage to an insured as was provided in the insured's original policy.

The term "renew" means to "begin again" or "continue in force." Webster's Third New International Dictionary 1922 (1976). A renewal insurance policy is one which "is based upon and subject to the same terms and conditions as were contained in the original policy." 13A J. Appleman & J. Appleman, Insurance Law and Practice, § 7648 (1976); see also Williams Petroleum Co. v. Midland Cooperatives, Inc., 679 F.2d 815, 819 (10th Cir. 1982) ("Renewal and extension are concepts closely allied to one another, normally involving a continuation of the relationship on essentially the same terms and conditions as the original contract."); East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO v. Fibreboard Paper Products Corp., 285 F. Supp. 282, 287 (N.D. Cal. 1968) ("Once one of the parties has stated his desire to modify the old contract, that contract cannot obviously be 'renewed,' since there would in effect be a different or new contract.") (emphasis in original); Hartford Accident and Indemnity Co. v. Sheffield, 375 So. 2d 598, 600 (Fla. App. 1979) ("The rule is generally recognized that: 'A renewal of a policy constitutes a separate and distinct contract for the period of time covered by such renewal. It is, however, a contract with the same terms and conditions. . . .'") (emphasis in original); Russell v. State Farm Mutual Automobile Insurance Co., 47 Mich. App. 677, 209 N.W.2d 815, 816 (Mich. App. 1973):

The renewals, although amounting to a new contract, in no way changed the terms and conditions of the policy, except as they continued in force. The rights of both parties, no matter how often a policy of insurance may have been renewed, are still bound by the provisions of the policy as originally issued. Its terms are neither enlarged, restricted or changed.

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We find further support for the interpretation that an insurer may not reduce the coverages of a policy upon renewal of the policy by the fact that A.R.S. § 20-1631(B) specifically references the renewal of coverages. This provision requires every insurance company issuing a motor vehicle policy in this state to include in such policy the statement that "the company shall not exercise its right to cancel or fail to renew the insurance afforded under (insert coverages)" unless at least one of the events enumerated in the statute has occurred. A.R.S. § 20-1632(B) (emphasis added).

Thus, unless one or more of the provisions of A.R.S. § 20-1631(B)(1) through (4) are applicable, an insurance company must renew the insurance afforded under the coverages set forth in the previous policy.^{1/}

We also think it is significant that A.R.S. § 20-1631 is a remedial statute enacted to protect policyholders from discrimination by insurers. Such a statute requires a liberal construction to effectuate its purpose. A.R.S. § 1-211(B) ("Statutes shall be liberally construed to effect their objects and to promote justice."); 12 J. Appleman & J. Appleman, Insurance Law and Practice, § 7049 (1981) ("Statutes applicable to automobile liability insurance policies, as well as provisions in those policies, must be construed in the light of the purpose to protect those who may be injured by use of automobiles."). Moreover, the legislature's requirement that the limitations of an insurance company's right not to renew be set forth in every motor vehicle insurance policy issued in this state requires an interpretation favoring the policyholder:

The declaration of the legislature as to the form of contracts of insurance, being within its constitutional powers, is the public policy of the state. When such body, acting within the scope of its powers, prescribes a standard form of policy, the statute is remedial in nature and should be liberally construed to promote its intended object and to suppress the mischief it was designed to prevent.

1. The section heading to A.R.S. § 20-1632 also references the term "coverage." Although section headings are not part of the statute, courts may consider them in determining legislative intent. State v. Superior Court In and For the County of Pima, 128 Ariz. 535, 537, 627 P.2d 686, 688 (1981).

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12 J. Appleman & J. Appleman, Insurance Law and Practice, § 7043 (1981).

Our conclusion is not changed by the reference to the term "reduction in the limits of liability or coverage" contained in A.R.S. § 20-1632.2/ Although this reference,

2. A.R.S. § 20-1632 provides:

A. A notice by the insurer to the policyholder of non-renewal, cancellation or reduction in the limits of liability or coverage shall be mailed to the named insured by certified mail or United States post office certificate of mailing at least ten days prior to the effective date of such non-renewal, cancellation or reduction in limits of liability or coverage. Such notice shall include or be accompanied by all of the following:

1. A statement in writing of the reasons for such action by the insurer and a notice indicating the named insured's right to complain to the director of the insurer's action within ten days after receipt of the notice by the insured.

2. Notice of the insured's possible eligibility for insurance through the automobile assigned risk plan, and the notice shall state that all information included in the notice is given pursuant to this article.

3. A refund of unearned premium, except a premium that has been financed.

B. Failure of the insurer to comply with subsection A shall invalidate any cancellation, non-renewal or reduction in limits of liability or coverage, except a cancellation or non-renewal for nonpayment of premium.

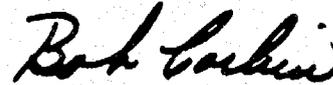
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which appears nowhere else in the statute, suggests a distinction between renewal of a policy and renewal of the coverage of a policy, we think no such distinction is intended.

Such a distinction is inconsistent with A.R.S. § 20-1631 which limits the insurer's right to refuse to renew coverage. To conclude that A.R.S. § 20-1632 give insurers unfettered discretion to reduce coverage would severely weaken the protections accorded policyholders by A.R.S. § 20-1631. Additionally, such a distinction would make the notice of reduction of coverage provision in A.R.S. § 20-1632 meaningless. This provision requires an insurance company which is reducing coverage to provide notice of such action. The notice must include information which indicates the insured has a right to complain to the director of the Department of Insurance. A.R.S. § 20-1632(A)(1). This complaint process would be meaningless if there were no limitations on the rights of the insurer to reduce coverage. Furthermore, the other provisions of the statute, however, which enable insureds to object to the insurance company's action, to seek an investigation and to obtain a determination by the director of the Department of Insurance refer only to the cancellation or non-renewal of policies. See A.R.S. § 20-1633. By construing the term "renew" in accordance with its accepted meaning, as we do here, practical effect can be given to all of the provisions of the statute.

Given these considerations, we conclude that A.R.S. § 20-1631 prohibits an insurer from reducing the limits of liability or coverage of a motor vehicle insurance policy unless one or more of the provisions of A.R.S. § 20-1631(B)(1) - (4) are applicable.

Sincerely,



BOB CORBIN
Attorney General

BC:CW:lp