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Southern District of Florida Takes a Swing at Surplus Lines Contract Interpretation

The Southern District of Florida recently held that an equipment schedule in an amusement ride supplier's insurance application formed a part of the resulting surplus lines insurance policy, based on an interpretation of common law that mirrored a Florida statute that applied only to admitted insurers. In *Steadfast Ins. Co. v. The Celebration Source*, No. 15-61668-Civ-Scola (S.D. Fla. Jan. 27, 2017), Steadfast Ins. Co. (Steadfast) issued a liability policy under Florida's surplus lines law to The Celebration Source (Celebration), an amusement ride supplier. In applying for the policy, Celebration signed an equipment schedule form that listed all equipment for which Celebration sought coverage. The equipment schedule expressly warned that there was "no coverage for any equipment not indicated." A typed version of the equipment schedule, with the same warning, was later mailed to Celebration with the policy. Despite this warning, the policy included a newly acquired recreation apparatus (NARA) endorsement, that provided limited coverage for newly acquired "recreational apparatus" not listed on the equipment schedule, if certain conditions were met.

During the policy period, a minor slipped out of an apparatus, known as the "Psycho Swing," operated by Celebration and on loan from another entity. The Psycho Swing did not appear on the equipment schedule. After the minor filed suit, Celebration tendered the claim to Steadfast and requested a defense. Steadfast filed a declaratory action seeking a determination that it owed no duty to defend or indemnify because the Psycho Swing was not listed on the equipment schedule. On summary judgment, Steadfast argued that it was undisputed that the Swing was not listed on the equipment schedule and that the policy affords coverage only for equipment appearing on the equipment schedule, citing Fla. Stat. § 627.419 for support. That statute provides that every insurance contract is construed in accordance with its terms and conditions as set forth in the policy, and as "amplified, extended, or modified" by any application, rider or endorsement thereto.

The district court agreed with the defendant-insureds that the statute did not apply to surplus lines carriers. Indeed, Fla. Stat. § 626.913(4) states that unless specifically stated as applicable to surplus lines insurers, the provisions of chapter 627 do not apply to surplus lines carriers. However, despite recognizing that the statute could not apply, the court nonetheless held that Florida's settled common law rules of contract interpretation dictated that the equipment schedule be read together with the policy as the two documents were executed by the same parties, at or near the same time, and concerning the same subject matter. The court also noted that the reference to "scheduled" apparatus on the NARA endorsement reinforced that finding as the policy and equipment schedule must be construed together to give meaning to the terms of the NARA endorsement. Finally, the court found that Celebration did not satisfy the conditions of the NARA endorsement and granted Steadfast's Motion for summary judgment.

The *Steadfast* decision is important for Florida surplus lines policyholders and insurers alike as it demonstrates that while surplus lines carriers may be exempt from many provisions of chapter 627, Fla. Stat., Florida common law and rules of contract interpretation still apply and may impose similar requirements or limitations, depending on the circumstance.

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