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FIRST CIRCUIT'S REVIVAL OF LOST POLICY CASE DEMONSTRATES THAT POLICYHOLDERS SHOULD NOT BE SO QUICK TO GIVE UP ON COVERAGE

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In *Cardigan Mountain School v. New Hampshire Ins. Co.*,^[1] the First Circuit Court of Appeals recently held that the policyholder sufficiently pled a plausible case that an insurance policy had been issued by New Hampshire Insurance Company for the period 1967–1968, even though neither party could locate the policy. The decision demonstrates a favorable application of the “plausibility” pleading standard articulated by the Supreme Court in *Ashcroft v. Iqbal* and *Bell Atlantic Corp. v. Twombly*, in the murky context of a lost insurance policy case.

Background

Cardigan Mountain School, a private middle school in Canaan, New Hampshire, sought coverage for a claim that the school received concerning unspecified events allegedly occurring during the 1967–1968 academic year. Cardigan was able to document that it had policies with New Hampshire Insurance Company (“NHIC”) at some point, but could not locate a policy covering the 1967–1968 period. When NHIC could not locate any policy in its records, it denied coverage. Cardigan commenced a declaratory judgment action against NHIC, seeking to prove that NHIC did in fact cover the school for the 1967-1968 policy year, and owed coverage for the claims in question.

In support of its claim that a policy existed, Cardigan could offer only circumstantial evidence of coverage. First, Cardigan provided documentation that it held an insurance policy with NHIC during the 1970-1971 academic year. Second, the complaint alleged that the accounting firm that prepared the school's audit report would have noted in its audit report whether the school changed carriers prior to the 1970-1971 academic year, yet no such change was noted. Third, Cardigan's complaint alleged that Cornelius Bakker, Cardigan's business manager from 1967-1970, was certain that the school had insurance during his tenure. Fourth, the complaint alleged that Bakker did not believe that Cardigan changed carriers during the 1967–1970 period. Finally, the complaint alleged that the insurance brokerage firm Cardigan used in 1967–1968 advised most of its commercial clients like Cardigan to place their insurance with NHIC. Cardigan alleged that these facts together provide a plausible basis to show that Cardigan had an insurance policy with NHIC for the 1967–1968 policy year.

In response, and relying in the Supreme Court's decisions in *Ashcroft v. Iqbal*,^[2] and *Bell Atlantic Corp. v. Twombly*,^[3] NHIC argued to the district court that Cardigan's complaint set forth “nothing more than speculation and conjecture,” and that the allegations did not give rise to a plausible inference that Cardigan had an insurance policy with NHIC. The district court sided with NHIC and dismissed the suit. Cardigan appealed.

Holdings

The First Circuit reversed the district court and remanded the case for further proceedings. The court held that, even under the rigorous pleading standard set forth in *Iqbal/Twombly*, Cardigan made a plausible showing that NHIC issued an insurance policy to the school for the 1967–1968 academic year. The court found that the existence of an NHIC policy as of 1971, and the allegations tending to show that Cardigan did not change its insurance coverages during the preceding years, supported a reasonable inference that Cardigan had a policy with NHIC during the 1967-1968 academic year. Thus, the court concluded that Cardigan's complaint “provides a plausible basis, beyond a mere possibility, for believing that New Hampshire Insurance Company issued the policy in question.”

Implications

Cardigan clarifies the federal “plausibility” standard in the context of a lost policy claim. The decision is significant for companies that are reluctant to make insurance claims because they cannot locate their policy or cannot determine who insured them. By breathing life into a seemingly bleak coverage suit, *Cardigan* demonstrates that policyholders should

not be so quick to abandon the possibility of insurance coverage simply because complete copies of older policies can no longer be located.

Endnotes

[1] CV 14-2182, 2015 WL 3393771 (1st Cir. May 27, 2015).

[2] 556 U.S. 662 (2009).

[3] 550 U.S. 544 (2007).

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