Michigan's Renewal Rule

The Insured's Last Resort

By Rabih Hamawi

According to the Insurance Information Institute, insurance companies wrote total net premiums of $1.2 trillion in 2017.[1] Based on my experiences within the insurance industry, the vast majority were premiums generated from the renewal of insurance policies. Generally, renewal policies are divided into two categories: (1) renewals within the same insurance company, as when an insurance company renews a policy it currently writes; or (2) renewals with the same insurance agent, as when an agent internally transfers within his or her agency an insured's policy from insurance company A to insurance company B.

Normally, renewal of an insurance policy creates no coverage dilemmas for an insured because the policy's unambiguous language controls a coverage dispute. But when the coverage dispute involves an insurance policy's renewal, the answer isn't always black and white, and a court may have to decide the coverage dispute based on the parties' intent as memorialized in the original policy, which may date back several years before the loss in question.

As the dominant party in the insurance company-insured relationship, an insurance company may, when renewing an insurance policy, unilaterally modify or reduce some of a policy's coverages, or change the terms and conditions without providing the insured with actual and conspicuous notice of the changes or reductions and without articulating how those changes or reductions could affect the renewal policy's response to a future loss.

What is Michigan's Renewal Rule?

When an insurance policy is renewed, an insured has *no duty* to read his or her *renewal* policy and may assume that the original policy's coverages, terms, and conditions haven't changed. When an insurance company renews a policy and makes changes, alterations, or reductions to the original policy's coverages, terms, or conditions, it must provide actual and conspicuous notice of any changes, modifications, or reductions. If an insurance company fails to do so, a court will reform the renewal policy and compel the insurance company to provide the broader coverage found in the original policy.[2]

Contrary to the assertion of some insurance companies, this notice applies not only when an insurance company reduces the coverage limits or amounts on a covered property, but also, as Michigan courts have consistently held, when other coverages, terms, or conditions are unilaterally reduced, modified, or changed as to affect coverage for a loss under a renewal policy.[3]

Michigan's Renewal Rule applies when policy renewal is automatic, as in direct-bill policies when the insurance company bills the insured directly for the renewal premium. It also applies when renewal is not automatic, as in agency-bill policies for which the insured has to pay the renewal premium directly to the insurance agent, who then deducts his or her commission and forwards the net premium to the insurance company.

Michigan's Renewal Rule also applies when an insured is required to submit and sign a renewal application for each policy as long as the insurance company hasn't manifested an intent to not renew the original policy and other evidence in the policy confirms that it is in fact a renewal.

Insurance companies must strictly comply with the notice requirement

When determining whether an insurance company provided the required notice, Michigan law imposes strict requirements on the type and nature of the notice. Whether an insurance company provided proper notice is generally a question for the court to decide depending on the nature and sufficiency of the notice.[4]

An insured has no duty to read a renewal policy

Generally, an insured must read the original insurance policy within a reasonable time after it is issued and delivered.[5] An insured must also inquire with the insurance company or agent about any discrepancies, coverage questions, or other issues within the original policy.[6] But, as previously mentioned, an insured has no duty to read a renewal policy.[7]

An insurance company may not attempt to circumvent the required notice by directing the insured to read the policy. For example, a Michigan court has held that a cover letter instructing the insured to "READ THE POLICY CAREFULLY to determine [his or her] rights, duties and what is and is not covered" doesn't sufficiently apprise an insured of changes or reductions to a renewal policy.[8]

Notice of changes must be clear and conspicuous

Michigan courts hold insurance companies to a high standard when determining whether actual notice of a renewal policy's reductions, modifications, or changes has been provided.

Although no Michigan court has enumerated a list of formal factors, courts usually focus on a few indicators to determine whether the notice was conspicuous enough to alert an insured that the policy had been altered and how the alteration may affect a potential claim:

- Location of the notice: Is it on the cover page of the renewal policy or is it buried somewhere inside?
- Nature of the notice: Is it emphasized, bolded, and apparent on the face of the renewal policy or is it hidden and unemphasized in fine print?
- Choice of the notice: Does the insurance company inform the insured of all changes or reductions or does it focus on certain changes or reductions and omit others?

In one case, a Michigan court held that an insurance company didn't provide proper notice when the notice consisted of a "single unemphasized reference in a twelve-page booklet," advising that "an exclusion has been added stating that we will not provide liability protection when members of the same household are engaged in a liability suit against each other."[9]

AT A GLANCE

When an insurance company renews a policy and makes changes, alterations, or reductions to the original policy's coverages, terms, or conditions, it must provide actual and conspicuous notice of any changes, modifications, or reductions it unilaterally makes.

Insurance companies must strictly comply with the notice requirement.

An insured has *no duty* to read his or her *renewal* policy and may assume that the original policy's coverages, terms, and conditions haven't changed.

Similarly, the insurance company cannot evade the notice requirement by including a cover letter asking the insured to read the renewal policy, especially when the cover letter highlighted coverage enhancements but not restrictions or exclusions in the renewal policy.[10]

Likewise, when an insurance company informs the insured about some, but not all, reductions or exclusions added to a renewal policy, proper notice has not been provided and the company is bound by the broader coverage found in the original policy.[11]

Michigan's Renewal Rule applies even when a new policy isn't a true renewal if an insurance company leads the insured to believe the policy is a renewal

Except for a few Michigan statutes regulating specific kinds of insurance policies like auto,[12] environmental liability,[13] and similar policies required by law, an insurance company may refuse to renew a policy or renew it with substantially different coverages, terms, or conditions, which Michigan courts treat as refusal to renew.[14]

Michigan's Renewal Rule applies even when the new policy isn't a true renewal if an insurance company leads the insured to believe the policy is in fact a renewal.[15] For example, if an insurance company renews the original policy using a temporary renewal binder that doesn't indicate that a policy-coverage form had changed and then issues a renewal policy without indicating that a new exclusion was added, the insured is entitled to coverage under the original policy's terms and conditions because he or she was led to believe that the new policy was a renewal.[16]

Michigan's Renewal Rule applies to insurance agents

Michigan's Renewal Rule implicates not only insurance companies; it also affects insurance agents because an original policy transferred internally within the same agency is considered a renewal.

For example, an agent writes a commercial property insurance policy for an insured with insurance company A for $5,000 in annual premium. Around the time of renewal, the agent remarkets the insured's policy and binds coverage with insurance company B after informing the insured that the original policy's coverage, terms, and conditions are "identical," "matching," or "unchanged," and provides the insured with no notice of differences between the original and renewal policies.

Courts have held that when an insurance agent internally transfers or moves an insured's policy within the agency, the agent must properly inform the insured that the original coverage amounts, terms, or conditions can't be replicated.[17] If the agent doesn't, he or she may be negligent for failing to procure the identical insurance coverage requested.[18]

Scenarios triggering Michigan's Renewal Rule

Michigan's Renewal Rule may bind an insurance company to provide the broader coverage found in the original policy when it doesn't provide the required proper notice, as in the following scenarios pulled from my own experiences and Michigan caselaw cited in this article:

- Reducing the amount of coverage on an insured building or personal property
- Reducing the limits of bodily injury coverage in an auto liability policy
- Changing the policy's property valuation from replacement cost (no deduction for depreciation) to actual cash value (deduction for depreciation)
- Reducing the time an insured has to provide notice of a first-party claim or a third-party loss from 90 days to 30 days
- Changing the identity of the notice of loss recipient from the insurance company or its authorized insurance agent to the insurance company only
- Changing the coinsurance valuation for business-interruption losses from 50 to 80 percent
- Changing the reporting period on completed construction projects involving a builder's risk policy from 90 days to 30 days

Rare exceptions to Michigan's Renewal Rule

An insurance company changes the renewal policy because a statute was amended

Although rare, Michigan's Renewal Rule may have harsh consequences for insureds. When a renewal policy's coverages, terms, and conditions are altered, changed, or reduced because of required statutory changes, an insured generally cannot rely on the Renewal Rule even when an insurance

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company didn't provide actual, conspicuous notice of renewal policy changes, reductions, or modifications.[19]

In one case, the United States District Court for the Western District of Michigan was forced to apply "legal fiction" to find for the insurance company.[20] The court held that, although an insurance company didn't provide actual notice of the changes in a renewal policy because of a statutory amendment, the insured had received constructive notice of the change because he was "charged with knowledge of the content of Statutes at Large."[21]

An insured moves to a different state

Although Michigan has no published cases on point, the Renewal Rule probably doesn't apply when the renewal policy's coverages, terms, and conditions are changed, modified, or reduced because an insured has moved to a new state.

In *Ruzak v USAA Ins Agency*, the insured purchased an automobile liability policy and renewed it for more than 40 years. Over those years, he moved multiple times and lived in different states. He eventually married and moved back to Michigan with his wife. Before moving back, he had cancelled his original policy and purchased a new policy from the same insurance company.[22]

Seven years later, he and his wife were involved in an auto accident. The insurance company refused to honor the full policy limits for his wife's claim because of a resident-spouse exclusion inserted in the new Michigan policy that had not been included in the original policy issued 40 years before when he lived in another state. The court refused to invoke the Renewal Rule given that the renewal policy was changed because of a move to a different state.[23]

Conclusion

Michigan's Renewal Rule may shield an insured and provide coverage for a loss when an insurance company unilaterally changes, reduces, or modifies an original policy's coverages, terms, or conditions without providing the insured with proper and conspicuous notices of these changes, alterations, or reductions. ■

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ENDNOTES

1. Insurance Information Inst, *Facts+Statistics: Industry overview* <https://www.iii.org/fact-statistic/facts-statistics-industry-overview> (accessed January 30, 2019).
2. *Connecticut Fire Ins Co v Oakley Improved Bldg & Loan Co*, 80 F2d 717, 719–720 (CA 6, 1936) and *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 398; 729 NW2d 277 (2006).
3. *Id.*
4. *Koski v Allstate Ins Co*, 213 Mich App 166; 539 NW2d 561 (1995), rev'd on other grounds, 456 Mich 439; 572 NW2d 636 (1998).
5. *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 145; 314 NW2d 453 (1981) and *House v Billman*, 340 Mich 621, 624; 66 NW2d 213 (1954).
6. *Parmet Homes, Inc*, 111 Mich App at 142.
7. *Koski*, 213 Mich App at 167; *Parmet Homes, Inc*, 111 Mich App at 142; *Amway Distrib Benefits Ass'n v Fed Ins Co*, 990 F Supp 936, 942 (WD Mich, 1997); and *J C Wyckoff & Assocs, Inc v Standard Fire Ins Co*, 936 F2d 1474 (CA 6, 1991). See also *Industro Motive Corp v Morris Agency, Inc*, 76 Mich App 390, 396; 256 NW2d 607 (1977).
8. *Amway Distrib Benefits Ass'n v Northfield Ins Co*, 323 F3d 386; 2003 Fed App 0082P (CA 6, 2003).
9. *Koski*, 213 Mich App at 171.
10. *Id.* at 172.
11. *Amway Distrib Benefits Ass'n*, 990 F Supp at 943.
12. MCL 500.3204 and MCL 500.2101 *et seq.*
13. Mich Admin Code R 29.2101 *et seq.*, adopting provisions of 40 CFR 280.92 *et seq.*
14. *American Cas Co v Rahn*, 854 F Supp 492 (WD Mich, 1994). See also *Russell v State Farm Mut Auto Co*, 47 Mich App 677, 681; 209 NW2d 815 (1973) and MCL 500.2104(5).
15. *Parmet Homes, Inc*, 111 Mich App at 145; *Industro Motive Corp*, 76 Mich App at 396; and *American Cas Co*, 854 F Supp at 501.
16. *American Cas Co*, 854 F Supp at 502.
17. *Industro Motive Corp*, 76 Mich App at 392.
18. See also *Khalaf v Bankers & Shippers Ins Co*, 404 Mich 134; 273 NW2d 811 (1978) and *Haji v Prevention Ins Agency, Inc*, 196 Mich App 84; 492 NW2d 460 (1992).
19. *Neuser v Hocker*, 140 F Supp 2d 787 (WD Mich, 1999).
20. *Id.*
21. *Id.* at 801, citing *Federal Crop Ins Corp v Merrill*, 332 US 380, 384; 68 S Ct 1; 92 L Ed 10 (1947).
22. *Ruzak v USAA Ins Agency*, unpublished opinion per curiam of the Court of Appeals, issued December 1, 2011 (Docket No. 288503).
23. *Id.*