

Knowledge of "Soliciting Agent" Imputed to Insurer Seeking Rescission of EPL Policy

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A federal district court, applying Iowa law, recently held that a group of insurers (known collectively as the "London Insurers") was not entitled to rescind an employment practices liability ("EPL") policy based on a policyholder's alleged failure to disclose material information where the insurers' "soliciting agent" had knowledge of the material information. *St. Paul Reins. Co., et al. v. Commercial Fin. Corp., et al.*, Case No. C00-4080 MWB, 2001 U.S. Dist. LEXIS 6158 (N.D. Iowa May 4, 2001).

U.S. Risk was the London Insurers' managing general agent, and it possessed underwriting authority for the London Insurers in the United States. Iowa Bankers Insurance & Services, Inc. ("IBIS"), a retail insurance broker that specializes in providing Iowa banks with insurance coverage, contracted with U.S. Risk. IBIS was the only Iowa licensed agent/broker associated with U.S. Risk. Therefore, when the London Insurers sold a policy in Iowa, any Iowa application had to be processed through IBIS.

U.S. Risk had underwritten an EPL policy for Commercial Financial Corporation ("CFC"), an Iowa bank. In August of 1999, U.S. Risk sent IBIS a letter informing IBIS that CFC's insurance was expiring and that U.S. Risk would like to keep the policy in place. Around the same time, CFC was in the process of acquiring Security State Bank ("SSB"). After the acquisition, three former SSB employees were fired. On October 13, 1999, an IBIS employee met with several CFC officers to procure CFC's insurance renewal application. During the October 13 meeting, the IBIS representative was informed of the firings of the former SSB employees, but the representative said that the firings were irrelevant because the renewal application was being completed only for CFC and two of its other subsidiaries, not SSB. On November 10, 1999, U.S. Risk sent IBIS an insurance binder based on CFC's October 13, 1999 application. On February 9, 2000, CFC sought to add SSB as a named insured under CFC's EPL policy, and U.S. Risk ultimately issued coverage for SSB.

Soon thereafter, the three former SSB employees sued SSB. After a notice of claim was submitted, the London Insurers investigated the claim, canceled the policy and sued CFC for rescission based on fraud. The London Insurers contended that the concealment of material information concerning the terminations during the process of requesting that SSB be added as an insured under CFC's EPL policy constituted fraud and entitled them to equitable rescission of the policy. CFC countered that the London Insurers' rescission claim was barred because IBIS, the London Insurers' "soliciting agent," knew of the terminations that were allegedly concealed. CFC relied on provisions of the Iowa code in support of its argument that IBIS was the London

Insurers' "soliciting agent" and that IBIS's knowledge was imputed to the London Insurers.

Based upon a detailed review of the facts presented and the language of the applicable Iowa Code provisions, the court agreed with CFC and concluded that IBIS was the London Insurers' "soliciting agent" as that term is defined in Iowa Code §515.123. Therefore, the court concluded that IBIS's knowledge, as the London Insurers' soliciting agent, was imputed to the London Insurers. The court then determined that IBIS knew of the SSB employee terminations prior to February 9, 2000, the date on which CFC requested that SSB be added as an insured under the EPL policy. Since IBIS's knowledge was imputed to the London Insurers, the insurers' claim for rescission based on fraud necessarily failed.