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Illinois Appellate Court Holds Proof Of Increased Premiums Alone Not Enough to Rescind Policy

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In *Direct Auto Ins. Co. v. Koziol*, 2018 IL App (1st) 171931, the Illinois Appellate Court held that the fact that an insurer would have charged a greater premium to an insured if the application was accurate was not, in and of itself, sufficient to rescind the policy.

In 2013, Koziol purchased an auto policy from Direct Auto Insurance Company (DAI). Later that year, Koziol filed a claim with DAI for coverage in an accident involving his 2008 Dodge Charger. During its investigation, DAI discovered Koziol had an additional vehicle at his home address – a 2002 Ford Explorer XLS – that was not identified on the application. Determining that the failure to disclose this vehicle was a material misrepresentation, DAI denied coverage asserting that any material misrepresentation in the application voided the policy. Koziol responded that the Ford belonged to his parents, who resided in the same building, and that vehicle was insured under a separate State Farm policy.

After two declaratory actions and a breach of contract action were consolidated, the parties filed summary judgment motions. The trial court denied DAI's motion, finding a genuine issue of material fact as to whether Koziol had the intent to deceive DAI in omitting the Ford Explorer from the application. However, the court found Koziol's *Beltran* argument persuasive. *Direct Auto Ins. Co. v. Beltran*, 2013 IL App (1st) 121128. *Beltran* requires (1) a false statement that (2) the insured intended to deceive the insurer or materially affects the risks assumed by the insurer. The trial court found that DAI provided no evidence that Koziol intentionally provided a false statement. Further, the increased premium alone was insufficient to establish a material misrepresentation.

On appeal, the Illinois Appellate Court analyzed *Beltran's* two-prong test. The uncontested evidence included: the Ford was not part of Koziol's application; the Ford was separately insured; and Koziol's insurance premiums would have increased 35% has the Ford been included in the policy. However, the court found that DAI failed to present evidence of any actual increased risk. Although the premium would have gone up 35% if the Ford had been disclosed on the application, that alone did not prove an increase in the risk insured.

DAI showed no evidence that additional individuals residing with the insured with their own vehicle increased the risk insured by the policy. DAI also provided no evidence that additional individuals drove the vehicle involved in the accident. Finally, DAI offered no evidence that the policy would not have been issued if the additional vehicle had been disclosed. Therefore, under 215 ILCS 5/154, the Illinois Appellate Court held that the omission of an additional vehicle did not constitute a material misrepresentation and denied DAI's claim for rescission of the policy.