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Federal court rules policy renewal clauses must offer similar terms to original deal

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By Josh Chetwynd

If an insurance policy has an offer for renewal, the language and terms for re-upping the agreement must be effectively the same as the initial deal, a federal appeals court ruled recently in a Pennsylvania case.

The decision *Indian Harbor Ins. Co. v. F&M Equipment Ltd.* was announced by the 3rd US Circuit Court of Appeals on Oct. 15. While the case dealt with a Pennsylvania lawsuit, the decision is now not only the law in that state but also all the others in the 3rd circuit's jurisdiction including New Jersey and Delaware.

This case centered on a 2001 10-year, $10 million policy for pollution and remediation legal liability protection issued by Indian Harbor to Furnival Machinery, which had been contracted by the federal government to clean up landfill sites.

Though the policy's coverage was increased to $14 million in 2006 for an additional premium, Furnival balked in 2012 when, despite a renewal clause in the agreement, Indian Harbor offered only $5 million in coverage when the initial deal had run its course.

The court found in favor of Furnival, saying that "for a contract to be considered a renewal, it must contain the same, or nearly the same, terms as the original contract."

A key to this decision, according to attorney Susan Stryker who recently blogged on the ruling for lexology.com, is whether there is specific language in the policy that calls for a renewal.

"The court [said] that future contracts need not incorporate such broad renewal

provisions and rejected the question of being held to a perpetual renewal based on such broad language as not” being part of this particular case, she said.