



Alerts

Insurance Agent Not Liable for Failure to Cover Boat

November 8, 2012

Professional Lines Alert

Defendant insurance agent provided an insurance policy application to a policyholder, who was seeking homeowner's insurance. The application requested information about any boat to be covered by the policy. The policyholder left the application blank where it inquired about a boat. Later, when the policy was renewed, the agent asked the homeowner whether he had a boat. The policyholder answered "no." Plaintiff victim was injured when she was run over by the policyholder driving his uninsured boat. The victim sued the policyholder, and when the insurance company denied coverage under the homeowner's policy, the victim and the policyholder entered into a consent judgment under which the policyholder assigned his claim against his insurance agent for failure to procure insurance on the boat. The policyholder testified that he had never read the policy and just assumed that the boat was covered. He admitted that he never asked questions because he never intended to insure his boat. The trial court granted summary judgment in favor of the agent and the Michigan Court of Appeals affirmed.

Question Before the Court and How the Court Decided It

Does an independent insurance agent satisfy his or her duty to the insured to procure adequate insurance coverage by asking the policyholder about the coverage he or she wanted?

Yes. The court held that the insurance agent owed the policyholder a duty to procure an insurance policy that provided adequate coverage because as a nonexclusive independent agent the agent works for more than one insurer and thus becomes the insured's agent.

Pursuant to *Genesee Foods Services, Inc. v. Meadowbrook, Inc.*, 760 N.W.2d 259 (Mich. App. 2008), the rule in Michigan is that an independent nonexclusive insurance agent owes the policyholder a duty to procure an insurance policy that provides adequate coverage because the agent has a fiduciary duty to act in the customer's best interests, both in terms of finding an insurer that can provide the most comprehensive coverage and, of ensuring that the insurance contract properly addressed the insured's needs. The court found no evidence that the agent breached its fiduciary duty to the policyholder. The homeowner's policy did not cover the subject boat and the agent had satisfied its duty by asking the policyholder about the coverage he wanted both in a written insurance application and through a later verbal request at time of renewal as to whether he owned a boat. It was the policyholder who had failed to meet his obligation to provide the necessary information so the agent could then ensure

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that the policy met his needs. The policyholder has a duty to raise any questions on coverage after issuance of the policy.

What the Court's Decision Means for Practitioners

This is a well-reasoned opinion where the court affirmed summary judgment because the agent twice received negative information on ownership of the boat and the burden then shifted to the insured to provide necessary information to the agent when applying for the policy and then inquiring as to coverage if he had questions after the policy was issued.

For further information, please contact your regular [Hinshaw attorney](#).

Holly Deremo et al. v. TWC & Associates, Inc. No. 305810 (Mich. Ct. App. Aug. 30, 2012)

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