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Alerts

Agent Not Liable for Not Obtaining Additional Coverage

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Defendant, an insured construction inspection firm, stored its computer data offsite on servers owned by plaintiff technology firm. When the technology firm experienced a crash of its servers after an electrical surge, all of the insured's data was lost. The insured had a longtime relationship with third-party defendant insurance agent and his agency which provided a variety of insurance coverages for the insured. Indeed, the agent and the principal of the insured met three times every year to review their existing coverage.

The insured reported the loss of its data to the insurance agent, who in turn forwarded it to the carrier. The carrier, after investigating the claim, issued a check in the amount of $50,000, which represented limits of coverage under a commercial computer coverage policy. The technology firm sued the insured for breach of contract, alleging that it had not been paid for its services. The insured filed a third-party complaint against its insurance agent, his agency, and the carrier, alleging breach of fiduciary duty, negligence and insurance malpractice. As to the agent and his agency, the insured specifically alleged that they had failed to see that the insured was protected against catastrophes such as the crash of the technology firm's server.

The insurance agent and his agency moved for summary judgment, alleging that the insured never asked for coverage on its off-site computer data. The trial court granted summary judgment and the Court of Appeals of Ohio, 8th district, Cuyahoga County, affirmed, holding that the agent and his agency did not have a fiduciary relationship with the insured under Ohio law and were not negligent.

Questions Before the Court and How the Court Decided Them

Did the insurance agent and his agency owe a fiduciary duty to the insured to advise it of what coverage it needed?

No. The court held that there was no fiduciary relationship between the insured and the agent and his agency under Ohio law. The relationship between them was nothing more than an ordinary business relationship between agent and client and the insured was in the best position to know how much coverage it needed. Ohio courts have not recognized that the insurance agent-client relationship rises to the level of a fiduciary relationship and thus the agent did not have a duty to advise the insured of the coverage it needed. The law in Ohio is that an insurance agent has a duty to exercise good faith and reasonable

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diligence in obtaining insurance that its customer requests, but it owes no duty to seek replacement coverage for an insured absent a request by the insured to do so.

Were the agent and his agency otherwise negligent in not advising the insured that it needed replacement coverage for offsite computer data storage where the insured never gave notice to the agent of offsite storage?

No. The insured has a corresponding duty to examine the coverage provided and is charged with knowledge of the contents of its insurance policies. The onus was thus on the insured here to review the policy declarations and notify the agent that it needed coverage for offsite storage of its data. The court pointed out that the insured missed multiple opportunities to put the agent on notice of the offsite storage when the insurance agent met with the principal of the insured three times a year. The agent testified that the insured never asked him to place or arrange coverage for data stored offsite with the technology firm. The insured's principal admitted that he could not recall ever notifying the agent of the offsite storage. The insured was in the best position to know how much coverage it needed because it knew about the offsite with the technology firm and it also knew from the five years of renewal policies that its offsite coverage was limited to only $50,000. The insured was best able to evaluate whether that limit was too much or too small and had a duty to request appropriate coverage.

What the Court's Decision Means for Practitioners

The appellate court here declined to find that under Ohio law a fiduciary relationship existed between the insured and the independent insurance agent and thus that there was no duty on the part of the agent to advise the insured of the amount of coverage it needed. The court correctly placed the duty on the insured to give notice to this agent who it met with three times a year that the long-time $50,000 coverage limit in its renewal policies for data storage was not enough and that they needed more coverage.

Tornado Technologies, Inc. v. Quality Control Inspection, Inc., 977 N.E.2d 122, App. 8th (Dist. Ohio Aug. 2, 2012)

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