



## Alerts

### California Insurance Agent Who Improperly Completed Insurance Application Liable to Insured

October 3, 2012

*Professional Lines Alert*

Defendant construction company hired an insurance agent to procure a commercial general liability insurance policy. The insurance agent prepared the application for the signature of the construction company's president. The agent checked the boxes on the application before it was ever sent to the insured for review. Information in the application on prior claims or threatened lawsuits was erroneous at the time it was sent to the insurance company. The agent also failed to explain key terms on claims, including whether "defective workmanship" that was to be disclosed included warranty and/or punch-list work. Plaintiff insurance company issued a policy and after claims were brought against the construction company for construction defects, the insurance company sued to rescind the policy, alleging that there were material omissions and/or misrepresentations in the application. The construction company brought a cross-claim against the insurance agent alleging claims for breach of contract and negligence in preparing the insurance application. The U.S. District Court for the Northern District of California denied the insurance agent's motion to dismiss the cross-claim for failure to state causes of action under both theories.

#### Questions Before the Court

*Did the cross-claim state a claim for breach of contract against the insurance agent?*

Yes. The court found that a claim for breach of contract was stated based on the allegations that the insurance agent agreed to assist the insured in completing the application. The court found that the construction company hired the agent to fill out the forms *correctly* as well as to advise on the meaning of the key terms so that the contractor could verify the information and provide proper responses. The agent breached its agreement with the contractor by inserting erroneous information into the application without explaining the significance of key terms. The contractor suffered damages to the extent that the insurer was now seeking to rescind the policy.

*Did the cross claim also state a claim for negligence against the agent?*

Yes. Under California law, an insurance agent has a general duty to use reasonable care in procuring an insurance policy requested by the insured. A broker is not obligated to assume special duties such as suggesting additional coverage or advising the insured on specific insurance matters. While it is also a general rule that an insured is responsible for any misrepresentations in an

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application prepared by an insurance agent, the insured is not precluded from seeking recovery from the agent for negligently preparing the application and failing to explain key terms. The court reasoned that explaining terms in the application is part of the process of procuring insurance and the agent had a duty of reasonable care in helping the contractor obtain the insurance. The court found that while the agent had not assumed any special duties, the allegations that the contractor relied on the agent to assist it with the process of obtaining insurance, including preparing the forms and communicating the application's requirements, sufficiently stated a claim in negligence.

### **What the Court's Decision Means for Practitioners**

This is a well-reasoned decision for the proposition that an insurance agent has a general duty to fill out an insurance application properly and to explain any key terms to the insured to verify that the correct information was in the application. The district court focused on the allegations that the agent checked the wrong boxes and put inaccurate information in the application before sending it on to the insured for signature. This holding allows the insured, when sued by the carrier to rescind the policy, to bring a cross-claim for both breach of contract and negligence against its agent based on an alleged failure to accurately fill out the application.

*James River Insurance Company v. DCMI, Inc.*, 2012 WL 2873763 (N.D. Cal. July 12, 2012)

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