



## Alerts

### Insurance Agent Can Be Sued by Intended Beneficiary for Negligence

September 26, 2012

*Professional Lines Alert*

Plaintiff's decedent purchased a life insurance policy from defendant insurance agent in 1993. Under the policy, the decedent's daughter from a previous marriage was designated as the primary beneficiary until she became of age in 2005 pursuant to a support decree. Plaintiff, the decedent's new wife, was listed as the beneficiary for the balance of the policy proceeds. In 2005, the decedent asked the insurance agent to change the beneficiary designation so as to remove the daughter and make the decedent's new wife the beneficiary of the entire policy. The decedent completed the paperwork to facilitate the change and subsequently the insurance agent told the decedent's new wife and the decedent in person and over the phone that the change had been made. When the decedent died in 2007, the insurance agent first informed the decedent's new wife that she was the primary beneficiary and later, after talking with the insurance company, advised her that the daughter was still the primary beneficiary of the insurance proceeds and that she would only receive the remainder.

The decedent's new wife sued the agent and the insurance company, alleging that they were negligent in failing to implement the decedent's request to change the primary beneficiary of the policy. The decedent's new wife also alleged that defendants were liable for negligent misrepresentation because they falsely advised her that the change had been made. The agent denied that he had received the paperwork from the decedent and that the conversations had taken place. The trial court granted summary judgment in favor of defendants. The intermediate appellate court affirmed and the Supreme Court of Iowa reversed, finding that material issues of fact precluded summary judgment.

#### Questions Before the Court

*Did the insurance agent owe a duty of care to an intended beneficiary to effectuate the insured's request to procure a policy that satisfies the insured's intent?*

Yes. The Supreme Court of Iowa held that the insurance agent owed the plaintiff a duty of care even though it turned out that she was not the primary beneficiary on the policy. Analogizing the facts to the situation where a named beneficiary of a will is entitled to maintain a negligence action against the attorney who drafts the will, the Court held that a life insurance agent owes a duty of care to an "intended beneficiary." The Court reasoned that the main

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purpose of a life insurance policy, like a will, is to benefit the intended beneficiary. The negligence of the broker who procures the policy, as with the attorney who drafts the will, results in foreseeable damage to the intended beneficiaries. The Court stated that if the intended beneficiary is not permitted to pursue such a claim, the purpose for which the agent or attorney has been retained will be frustrated. The agent's duty is to carry out the insured's intent by procuring the insurance requested. The Court clarified, however, that the decedent's new wife had to prove that she was the intended beneficiary and that the insurance agent was aware of that status.

*Was the decedent's new wife entitled to maintain a negligent misrepresentation claim against the insurance agent based on his inaccurate advice that she was the sole beneficiary?*

Yes. The Court also held that the decedent's new wife could also bring a claim based on the alleged misrepresentations made by the agent regarding the change in the beneficiary on the policy. Iowa has adopted Section 552 of the Restatement (Second) of Torts (1977), which limits negligent misrepresentation claims to those who are in "the business of supplying information to others" and requires that there be a relationship of an advisory nature between the parties rather than an arm's length or adversarial relationship. The Court pointed out that an insurance agent's sale of a policy to an insured is an arm's-length transaction like a retailer selling a product, *but by the time the insurance agent advised the decedent's new wife and the decedent that decedent's daughter was no longer the primary beneficiary on the policy, their relationship had changed.* The decedent was the insured and the agent was functioning as his agent; this became an advisory relationship that would support a claim for negligent misrepresentation. The Court also found that the insurance agent was within the class of defendants against whom an action for negligent misrepresentation could be brought. Finally, the decedent's new wife, even though she was not the policy holder, was found by the Court to be a proper plaintiff to pursue an action against the agent under the Restatement because liability for negligent misrepresentation extended to losses suffered by the person for whose benefit the insurance agent intended to supply the information. The insurance agent was under a duty to exercise reasonable care to provide accurate representations to the decedent's new wife about existing information which was ascertainable to him.

There was a vigorous dissent in which it was argued that the majority was expanding the law beyond the purported liability of an attorney who drafts a will, to actions by an intended beneficiary of a life insurance policy against the insurance agent and that this placed the agent in a position of owing conflicting duties to the insured and the intended beneficiary. The defense also argued unsuccessfully that these claims were barred by the economic loss doctrine.

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

The Iowa Supreme Court fashioned a decision that appears to expand the potential liability of an insurance agent for negligence to intended beneficiaries of policies in which the policy holder's intent is not clear from the policy itself, where there is little or no documentation, and where there is only parole evidence on what had occurred. The Court made clear that the decedent's new wife bore the burden on remand of proving her theory of the case. However, the import of this decision is the Court's finding of a fiduciary-like relationship between agents and insureds akin to that of attorney and client once the agent takes on an advisory role during the course of the relationship. This may lead to uncertainty for the agent regarding his or her professional standard of care in a given relationship.

*Pitts v. Farm Bureau Life Insurance Company*, 818 N.W.2d 91 (Iowa July 6, 2012)

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