HINSHAW

Alerts

Court Finds that Statute Eliminated the Distinction Between Agents and Brokers

December 30, 2013
Lawyers for the Profession®

Plaintiffs brought an action against an insurance agent and the insurance carrier seeking damages for the agent's negligence in procuring automobile insurance that did not name the insured's girlfriend and her son as insureds. When the girlfriend's son was struck by a vehicle while riding his bicycle, the carrier denied coverage. After an accident under a prior policy, the same carrier had required the plaintiff to add his girlfriend to his policy as an additional driver. When renewing the policy, plaintiff alleged that he asked the agent to add the girlfriend and her son to the policy as additional insureds. The declaration page for the new policy listed only a "female, 30-64." The policy holder, the girlfriend and her son sued for damages and a declaration of coverage. The agent moved to dismiss the action alleging that he did not owe plaintiffs a duty in procuring insurance because under an Illinois statute only an "insurance producer" owed a plaintiff insured a duty of care in procuring insurance coverage for them. The statute 735 ILCS 5/2-2210(a) (West 2008) provided in relevant part:

> "An insurance producer, registered firm, and limited insurance representative shall exercise ordinary care and skill in renewing, procuring, binding or placing the coverage requested by the insured or proposed insured."

The carrier moved to dismiss, arguing that if the agent was not liable, then it could not be liable to plaintiffs for negligence under *respondeat superior*. The trial court granted both motions, holding that the agent was not a broker and, therefore, did not owe the plaintiffs a duty of care. Plaintiffs appealed. The Appellate Court for the Fourth District reversed.

Question Before the Court and How the Court Decided

Does the Illinois statute remove the common-law basis for distinguishing between insurance brokers who owe a fiduciary duty to their customers and insurance agents who owe the same duty to the insurers?

Yes. The court found that a plain reading of Section 2-2210 is that any person required to be licensed to sell, solicit, or negotiate insurance has a duty to exercise ordinary care in procuring insurance. As additional support, the court cited to Section 500-10 of the Insurance Code 215 ILCS 5/500-10 (West 2004), which provided that "any person required to be licensed to sell, solicit, or negotiate insurance had a duty to exercise ordinary care" in procuring

Service Areas

Professional Liability

insurance. The court found that there was no distinction in either of these statutes between an insurance agent and an insurance broker. Under the common law, insurance brokers owed a fiduciary duty to their customers and agents owed a duty to the insurers. The court also cited to *Couch on Insurance* with approval to the effect that an agent or a broker is liable to his or her principal if they fail to procure or renew insurance that they had contracted to do. This same Appellate Court issued an opinion with the same holding in 2006 in another case involving the same carrier that was subsequently vacated by the Illinois Supreme Court because a settlement rendered the claim moot.

What the Court's Decision Means for Practitioners

This decision construes the terms "insurance producers" in Section 2-2210 to include both insurance agents and brokers, thus removing the common law distinction that an insurance agent only owes a fiduciary duty to the carrier. The Appellate Court for the First District in *Garrick v. Mesirow Financial Holdings, Inc*. 994 N.E.2d 986 (July 26, 2013) recently stated that it would use the words insurance "broker" and "producer" interchangeably citing to 215 ILCS 5/500-10 of the Insurance Code.

Skaperdas v. Country Casualty Insurance Company, 996 N.E. 2d 766 (4th Dist. November 5, 2013).

For more information, please contact your regular Hinshaw attorney.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.