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Insurance Agent had Special Duty to Advise Dental Practice About its Insurance Coverage and to Procure Full Coverage

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Plaintiff was a dental practice that was referred to defendant insurance agent to secure Indiana Dental Association endorsed insurance coverage for his business. Plaintiff purchased the coverage recommended by the agent who was a nonexclusive agent for defendant carrier to sell its Dental Association endorsed coverage.

The agent had a ritual whereby he would send Plaintiff's office manager a questionnaire with an existing declarations page outlining the current year's policy limit with questions to determine changes in the practice which might affect its insurance. The office manager would complete the questionnaire and send it back. The renewal would be processed by the agent who would then send Plaintiff an updated coverage summary for the forthcoming policy year and a cover letter stressing the importance of reviewing the coverage summary to confirm that the proposed coverage met plaintiff's expectations.

In 1999, 2008 and 2009 plaintiff's office manager annotated the questionnaire to increase the insurance coverage by a specified amount. In 1999, the insurance agent overlooked a notation on the renewal questionnaire to add the requested contents coverage. In 2008, the office manager requested that contents coverage be increased to $350,000 from $204,371, but the summary sent by the agent, which listed the coverages under the policy, only listed the contents coverage at the prior amount of $204,371. The annual questionnaire sent by the agent to plaintiff in 2009 again listed office contents coverage of only $204,371 and the office manager requested another increase in coverage in the amount of $45,000. Upon receipt of this questionnaire, the agent finally directed the carrier to increase the coverage beginning with the new policy period which was to start on November 27, 2009.

On October 25, 2009, a fire destroyed plaintiff's offices and the content loss amounted to $704,394 which resulted in a shortfall of more than $500,000. Plaintiff filed a complaint against the carrier and the agent to recover the uninsured losses from the fire. Both parties filed motions for summary judgment and the trial court granted summary judgment in favor of the carrier holding that the agent was not under a special duty to advise Plaintiff about its insurance coverage despite the fact that the agent and plaintiff had a long-term relationship. The trial court found that it was an arms-length relationship typical of what exists between an insurance agent and insured with the agent's

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discretion being limited to coverages in the amounts reflected on the forms completed by plaintiff. And, the agent did not provide insurance counseling and did not hold himself out to be an agent with skills over and above other agents. The trial court also found that there was no factual basis that the agent was under a contractual duty to provide insurance that would have fully covered the fire losses sustained by plaintiff. The plaintiff appealed and the Indiana Court of Appeals reversed.

Question Before the Court and How the Court Decided It

Whether an Insurance Agent has a Special Duty to Advise Insureds About its Insurance Coverage and has a Contractual Duty to Provide Full Coverage to the Insured?

Yes. The court recited the law in Indiana to be that an insurance agent who undertakes to procure insurance for another owes the principal a general duty to exercise reasonable care, skill and good faith diligence in obtaining insurance. In the absence of a special relationship, the agent does not have a duty to inform the insured about the adequacy of the coverage or any alternative coverage available. Evidence of the establishment of a long-term relationship included whether the agent (1) exercised broad discretion and servicing the insured's needs; (2) counseled the insured concerning specialized insurance coverage; (3) held themselves out as a highly-skilled insurance expert; or (4) received compensation for expert advice above customary premium paid. The Court of Appeals found that a special relationship existed between plaintiff and the agent based on their 30 year professional affiliation, the agent's yearly ritual of sending questionnaires and cover letters on updated summary of coverage for the forthcoming year, and the fact that plaintiff relied on the agent's advice for recommended changes to the policies. The cover letter sent by the agent with his updated summary for the forthcoming year, the court found, could not be interpreted as placing the burden on the insured to ascertain that the agent actually acquired the change in coverage. Based on their 30 year relationship, the agent had an obligation to advise plaintiff with respect to its insurance coverage, and the agent's failure to do so triggered its liability. The trial court found that there was a genuine issue of material fact as to whether the carrier could be held vicariously liable for the agent's actions.

What the Court's Decision Means for Practitioners

This agent had set up a yearly ritual for the renewal process for his long term client's insurance coverage, but he simply failed to follow-up on the changes in coverage requested at least twice, and those failures snowballed into a shortfall when a loss occurred. The court simply refused to find that the client's failure to catch the errors from the cover letters sent with the coverage for the new year was the cause of the loss based on this record.

Indiana Restorative Dentistry, PC v. The Laven Insurance Agency Inc., 999 N.E.2d 922 (Ct. App. Ind., December 17, 2013)

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