



## Alerts

### Insurance Producer Had No Duty to Review Insured's Application for Replacement Coverage and Explain the Application to the Insured

April 7, 2016

*Professional Lines Alert*

*Office Furnishings, Ltd. v. A.F. Crissie & Co., No. 1-14-1724 (Illinois Appellate Court, 1st Dist. December 16, 2015)*

Plaintiff was the occupant of a warehouse/office space where a portion of the roof was made of PVC membrane that had not been replaced since 1993. The remainder of the roof was "tar and gravel" and had been the subject of an insurance claim in 2001 due to leaking. Contractors in 2001 recommended, after repairing leaks, that the roof be replaced. Defendant insurance producer was advised by plaintiff's property insurance carrier that it could not renew coverage because it had paid out more in claims on the building than they had received in premiums. The insurance producer was unsuccessful in finding replacement coverage even though the plaintiff's owner did not request replacement insurance — he just assumed his producer would find replacement coverage. The insurance producer requested plaintiff to provide updated information on the roof, but it was not known whether plaintiff returned a form with the updated information. In response to an ACORD application, an exclusive agent for another carrier advised the insurance producer that he could offer plaintiff coverage. Meetings were held between the new carrier's agent, the plaintiff's owner and the insurance producer to complete the application for coverage. The application as submitted stated that the roof was only five years old. The new policy was issued and within a short period of time the building's roof started to leak heavily — plaintiff sustained damages to both the building and its contents. Plaintiff's claim to the new carrier was denied because of misrepresentation on the age and condition of the roof.

Plaintiff brought a professional negligence action against the insurance producer alleging in excess of \$3 million in damages. During the jury trial, the plaintiff's expert testified that the insurance producer owed a duty to review the application to the new carrier to make sure it was accurate and should have explained the application to the plaintiff. The insurance producer's expert testified that it was not standard practice for a producer to review such an application or explain the application to the plaintiff including the consequences of providing incorrect answers. The insurance producer discharged his duty to find replacement coverage for plaintiff. The jury returned a verdict for the plaintiff for \$467,721 based on a finding that the insurance producer had breached its duty to the plaintiff. The insurance producer moved for judgment notwithstanding the verdict, which the trial court granted on grounds that the

#### Service Areas

Professional Liability



verdict improperly imposed a duty on the insurance producer beyond just procuring replacement coverage. The Illinois Appellate Court for the First District affirmed.

### **Question Before the Court**

*Does an insurance producer have a duty to verify information on the application for replacement coverage to a new carrier and explain the application to the insured?*

No. The court held that under the Illinois insurance producer statute the producer only has a duty to exercise ordinary skill and care in responding to a request from the insured to provide desirable coverage or notify the applicant that its application had been rejected. Such a duty could not be imposed based on a vague request to make sure the insured is covered. The court rejected plaintiff's argument that the insurance producer's attendance at the meetings with the plaintiff's owner and the agent for the new carrier subjected the producer to liability if the policy became void due to his negligence. The court found that the evidence showed that plaintiff's owner did not make a specific request for coverage, but only assumed the producer would find replacement insurance. The insurance producer found a carrier to issue a replacement policy. To require the producer to then review the application to the new carrier for accuracy and then explain the consequences of giving inaccurate information to the plaintiff's owner, would extend his duty beyond that of ordinary care as defined in the Illinois statute.

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

The Court overturned this jury verdict against the producer because imposing such an extended duty on the producer to in effect verify the application to the new carrier made no sense because the producer did not know the age of the roof on this building and would not know if the plaintiff's owner was even answering the questions on the application correctly.

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.*