



## Alerts

### Agent Had No Duty to Produce Additional Insurance Coverage For Lost Rent and Soft Cost Without a Specific Request

**May 9, 2016**

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*APM, LLLP v. TCI Insurance Agency, Inc.*, No. 20150243, Supreme Court of North Dakota, March 15, 2016

Plaintiff, a property management company, was seeking a builder's risk insurance policy to cover an apartment building under construction. The Plaintiff's president had discussed with Defendant Insurance Agent a policy that covered lost rent and other soft costs such as interest. Ultimately, he asked the Agent to procure a second policy written by a different carrier that was cheaper, but did not contain additional coverage for lost rent and other soft costs. There was no evidence that Plaintiff's president ever asked for the additional coverage. The Agent informed the president that the carrier for the second policy did not offer an endorsement for such additional coverage.

When a fire at the construction site delayed the opening of the apartment building for five months, the Plaintiff filed a claim for damages caused by the fire, including lost rent and interest charges. The carrier denied the portion of the claim seeking recovery for lost rent and interest because of lack of coverage. Plaintiff then sued the Agent and his agency alleging negligence for failing to offer Plaintiff a policy endorsement that provided additional coverage. The Agent moved for summary judgment in the trial court, claiming that the Plaintiff never requested such additional coverage, and the Agent was not required to offer it. During discovery, it was learned for the first time that the carrier for the second policy did have an endorsement available covering lost rent and interest at the time the policy was purchased. Plaintiff argued that it had a special relationship with the Agent and his misstatement on the existence of the endorsement was a breach of his duty to Plaintiff. The Trial Court granted summary judgment in favor of the Agent ruling that the Agent had no duty to procure additional coverage without a specific request from the Plaintiff. The Supreme Court of North Dakota affirmed.

#### Question Before the Court

*Does an insurance agent have a duty to obtain additional coverage for lost rent and soft costs without a specific request from the policy holder?*

No. The rule in North Dakota is that an insurance agent must exercise the skill and care which a reasonably prudent person would use under similar

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circumstances. The Agent's duty was to act in good faith and follow instructions. The Court found that the Agent was simply following the instructions of his client when he procured the second policy. Although the Agent had misstated whether an endorsement for lost rent and soft costs was available, the Court concluded that this misstatement did not amount to a breach of duty. The Court found that there was no evidence that the Agent made this statement in bad faith because Plaintiff's president already knew that the second policy as quoted did not cover lost rent and soft costs. Plaintiff's president knew the first policy quoted by the Agent offered the additional coverage at a higher price. The Court also rejected Plaintiff's argument that a special relationship existed between Plaintiff and the Agent. In North Dakota, the rule is that there must be a long-standing relationship with interaction on a question of coverage where the insured relies on the expertise of the agent to his detriment. The Court found there was no evidence indicating any long-standing relationship. Plaintiff's president was an experienced business man who had purchased builder's risk policies before. The president did not purchase insurance exclusively through the Agent and in fact he talked to the other agency about a quote for the second policy.

### **What the Court's Decision Means for You as a Practitioner**

While the Court ruled for the Defendant in this case, the decision could have easily gone the other way because of the Agent's misstatement that the carrier for the second policy did not offer additional coverage for lost rent and soft costs. Thorough research may have uncovered the existence of that endorsement for additional coverage and the amount it added to the cost of the second policy. Timely communication of that information to the president may have foreclosed the existence of additional coverage as an issue!

For more information, please contact your regular [Hinshaw attorney](#).

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