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Insurance Agent Who Provided Carrier's Valuation and Two Competing Quotes Did Not Counsel the Insured and Create a Special Relationship

Mohamad Ali Ali Yousefkhani, Mr

Mohammad Ali Yousefkhsani.

L.L.M Law student .

www.yousefkhanimohamad@yahoo.com

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Cox v. Mayerstein-Burnell Co., Inc., Case No. 79A05-1402-CT-75; Court of Appeals of Indiana (Oct. 31, 2014).

Plaintiff Cox's pub had insurance coverage with Society Insurance on its building for $383,000. Plaintiff could no longer afford to pay the premiums and let the Society policy lapse. Plaintiff's manager contacted defendant insurance agent about a replacement policy advising that it was uninsured and due to financial difficulties desired to keep its premiums as low as possible. The manager provided the agent with a copy of the declarations page from the Society policy and requested the same coverage in the new policy. The agent submitted the information to Illinois Casualty, which used it to prepare a commercial valuation that valued plaintiff's building at $265,049. The agent presented plaintiff's manager with the valuation and two quotes from Illinois Casualty for standard business policies with coverage limits of $354,000 and $265,000. The agent did not offer any opinion to the manager about the value of plaintiff's building, but only stated that it appeared Illinois Casualty believed it could adequately insure the building for $265,000. Plaintiff's manager purchased the policy with the $265,000 limits and less than one month later, fire destroyed plaintiff's building. Plaintiff filed a complaint against the defendant insurance agent and his employer alleging that the agent was negligent because the insurance proceeds were insufficient to cover the replacement costs of the building, which exceeded $500,000. The trial court granted summary judgment on grounds that the agent had no duty to advise the plaintiff on adequacy of its coverage. The plaintiff appealed, arguing that a special relationship was created when the agent provided the two quotes and the valuation. The Indiana Court of Appeals affirmed.

Questions Before the Court and How the Court Ruled

Did the agent's providing two different quotes for standard business policies constituted "counseling an insured" so that a special relationship existed?

No. The law in Indiana is that an insurance agent enters into a special relationship with an insured thus obligating the agent to advise the insured about coverage when there is a showing of a long-term relationship between the parties that is something more than the standard insured-insurer relationship. Counseling of the insured concerning specialized insurance coverage is one of the factors that indicates the existence of such a special relationship. The Court found that there was no long-term intimate relationship between plaintiff and the defendants because their relationship began only one month before the fire. The Court also found that the agent provided no specific analysis regarding specialized coverage. The Court held that "counseling an insured" occurs when an insurance agent undertakes to provide a specific analysis of one's insurance needs in a very limited situation, such as where advice is given over a 12-year period regarding coverage for precise risks attendant to management and improvement of a horse farm. Here, plaintiff's manager made the final determination of what coverage she needed. The agent did not counsel plaintiff regarding specialized insurance needs, but merely offered two quotes for standard property and casualty insurance policies, which were not specialized insurance.

Did the agent assume a duty to advise the insured regarding the adequacy of its coverage by providing the carrier prepared building valuation?

No. The law in Indiana is that a duty to exercise care and skill may be imposed on one who by affirmative conduct assumes to act, even gratuitously, for another. The assumption of such a duty creates the special relationship between the parties and a corresponding duty to act in a reasonably prudent manner. In the context of an insurance agent, the Court cited to cases holding that an insurance agent had assumed such a duty after making false representations as to the existence of coverage to the insured. The Plaintiff here argued that the agent assumed such a duty by providing the $265,049 building valuation to plaintiff's manager who wanted to save money. The Court disagreed and held that by providing the valuation, the agent did not assume a duty to advise on the adequacy of coverage. The Court found that the plaintiff was essentially arguing the existence of a duty to advise under the guise of a general duty of care. The preparation of a business valuation is a standard part of the insurer-insured relationship and to hold that an insurer assumes a duty to advise by simply preparing a valuation would create a duty in nearly every instance. The Court went on to comment that something more such as representations and assurances are needed to assume such a duty on the part of an insurance agent. The net effect of placing such a burden on insurance companies would be to transform them from a competitive industry into personal financial counselors or guardians of the insureds, who would become free riders paying lower premiums, perhaps for many years and then retaining the ability to claim the benefit of higher coverage if a loss is incurred.

What the Court's Decision Means for Practitioners

This decision rejected an innovative effort by the plaintiff to show the existence of a special relationship when the agent provided the financially strapped insured with a carrier-prepared valuation that contained the same amount as turned out to be the claimed insufficient replacement cost coverage. The Appellate Court found that no counseling by the agent had really occurred and was unwilling to create a duty on the part of insurance agents on public policy grounds whenever such a valuation was prepared.

For more information, please contact Donald A. O'Brien.