Agents E&O Standard of Care Project

Mississippi Survey

To gain a deeper understanding of the differing agent duties and standard of care by state, the Big "I" Professional Liability Program and Swiss Re Corporate Solutions surveyed their panel counsel attorneys. Each attorney was asked to draft a brief synopsis outlining the agents' standard of care in their state. They were also asked to identify and include a short summary of the landmark cases. In addition, many of the summaries include sample case studies emphasizing how legal duties and issues with standard of care effected the outcome. Finally, recent trends in errors in the state may also be included.

This risk management information is a value-added service of the Big "I" Professional Liability Program and Swiss Re Corporate Solutions. For more risk management information and tools visit www.iiaba.net/EOHappens. On the specific topic of agents' standard of care check out this article from the Hassett Law firm, our E&O seminar module, and this risk management webinar.

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MISSISSIPPI INSURANCE AGENT'S DUTY OF CARE: WHAT IS IT, WHEN AND HOW IT MAY BE CHANGED?

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This Article discusses the duty of care of insurance agents in the State of Mississippi; how this duty may be changed by the actions of the agent or judicial decisions; and the importance of proof of policy delivery to an insured. Following a discussion of the duties are some case summaries demonstrating these duties and how they may arise.

I. Summary of Standard of Care in Mississippi.

A. Basic Duty of Care.

In 1975 in the case of *Ritchie v. Smith*[1], the Mississippi Supreme Court held that the duty of an insurance agent is as follows:

> [a]n insurance agent owes the duty to his principal to exercise good faith and reasonable diligence to procure insurance on the best terms he can obtain, and any negligence or other breach of duty on his part which defeats the insurance he procures will render him liable for the resulting loss. In this regard, the agent must faithfully carry out the instructions given him by his principal, his duty being not merely to obtain a policy, but to obtain one which conforms to the application. Moreover, by holding himself out as being qualified to procure insurance, the agent is required to exercise the particular skill reasonably to be expected of one in that occupation, and to have adequate knowledge as to the different companies and the variety of terms available with respect to the undertaking he has assumed.

In the context of the *Ritchie* case, the agent's principal was deemed to be the insured. Many times, the agent's principal is the insurance company, but this fact does not change the duties owed to the agent's customer or proposed insured. Although this case is nearly forty (40) years old, this is the standard which even more recent cases in Mississippi cite when discussing the standard of care owed by an insurance agent to his customer. Stated another way, the Mississippi Courts often describe an agent's duty as "a duty to use that degree of diligence and care with regard to securing insurance which a reasonably prudent person would exercise in

the transaction of that person's own business of a like nature."[2] This is a subjective standard and will be considered on a case-by-case basis, according to the factual allegations of each matter.

B. The Duty of Care Can be Expanded by the Agent.

In the 2010 case of *Mladineo v. Schmidt,*[3] the Mississippi Supreme Court held that insurance agents in Mississippi do not have an affirmative duty to advise insurance buyers regarding their coverage needs. However, if an agent undertakes the duty to advise the insured on what coverages he should obtain, then the agent must exercise reasonable care in doing so.[4] In other words, the actions, statements or comments of an agent can actually expand the duty that he owes to the customer. An agent's discussions with his proposed insured should generally be limited to what coverages are available, without recommendation or comment regarding what coverages are required. Of course there can be exceptions. For example, if an agent knows his customer has five (5) or more employees, the agent should advise the customer that the law requires workers' compensation coverage. If an agent and a proposed insured engage in conversations regarding various coverages that are available in the marketplace and the proposed insured decides not to purchase those coverages, it would be advisable for the agent to memorialize those conversations in writing and note that the proposed insured rejected those coverages.

C. Court-Created Duties of Care.

Mississippi Code Ann. § 83-5-28(1) clearly states that an insurer must advise an insured of a cancellation, reduction in coverage or nonrenewal thirty (30) days prior to the effective date of such cancellation, reduction or nonrenewal. In 2009, the United States Court of Appeals for the Fifth Circuit was presented with the question of whether notice by a carrier to the agent of an insured was sufficient to satisfy this statutory requirement. The Court ignored the plain language of the statute and found that notice to an agent, as opposed to the insured, as required by statute, is sufficient.[5] Accordingly, this opinion burdens an agent with a duty to advise insureds of cancellations, reductions in coverage and/or a nonrenewal of coverage that agents did not previously have.

Until recently, it has been generally understood that if an agent obtained a signed waiver from the insured rejecting uninsured motorist's coverage, the agent had fulfilled his duty to make the availability of uninsured motorist's coverage known to the insured. However, in the recent case of *Honeycutt v. Coleman*[6], the Mississippi Supreme Court held that even when the agent obtains a signed waiver of uninsured motorist's coverage by an insured, whether the insured made a knowing and intelligent waiver of uninsured motorist's coverage is ultimately a question of fact to be resolved by the trier or fact. In other words, if the insured disputes understanding the waiver of uninsured motorist's coverage, the case will go to a jury even when the agent has obtained a signed waiver from the insured.

D. A Finding of a Special or Fiduciary Relationship Between an Agent and Insured Can Lead to an Even Broader Duty of Care.

To date, in Mississippi, the Court has found that the purchase of insurance is deemed to be an arm's length transaction and that no fiduciary relationship exists between the insurer and the insured, or between the agent of the insurer and the insured, in the context of a first-party insurance contract.[7] However, there are numerous cases that have considered the issue of whether a fiduciary relationship exists between an agent and an insured. Although Mississippi courts have not yet found such a relationship to exist, it seems that based upon the Court's analysis in various reported cases, if the agent's involvement in the insured's affairs involves business or financial recommendations, along with advice on the procurement of insurance and reliance upon such recommendations and advice, the Mississippi Supreme Court might find the existence of a special or fiduciary relationship. Under this scenario, an agent's duties to an insured would be expanded or heightened.

II. Proof of Policy Delivery is Frequently an Agent's Best Evidence to Defeat an Errors and Omissions Claim.

Mississippi is a duty to read state. If an insurance policy has been delivered to an insured, the insured is charged with knowledge of the terms and conditions of the insurance policy, regardless of whether the insured reads the policy or not.[8] The interpretation of an insurance policy's language and whether such language is clear and unambiguous is a question of law for the court to decide.[9] The Mississippi Supreme Court has gone even further and held that when an insurance policy has been delivered, an insured's reliance on an agent's representations regarding the coverage, which are contrary to clear and unambiguous language contained in the policy, is unreasonable.[10]

Therefore, one of the most important pieces of evidence in defeating an insured's alleged breach of duty claim against an agent is proof of delivery of the policy to the insured. Regardless of whether a policy is mailed or hand-delivered by an agent to the insured, the agent should include a cover letter that will provide evidence that delivery was made to the insured. The agent should consider attaching the delivery letter to his agency management system and if the policy is mailed to the insured, ideally, the agency representative, who actually places the policy in the mail should enter an activity into the system reflecting that the policy has in fact been mailed to the insured. In addition, if a policy is hand-delivered to an insured, the agent should present the insured with a policy delivery receipt and have the insured sign and date it, acknowledging receipt of the policy or, at the very least, enter the date and time of the delivery of the policy into the agency management system.

Of course, some insurance carriers mail the policies directly to the insured. In this situation, it can be more difficult for the agent to prove delivery of the policy to the insured, since the agent is not involved in the process. Under these circumstances, when the agency

receives the "agent's copy" of the policy from the carrier, the agent might want to confirm by mail, email or telephone call to the insured that the insured has received the policy, and then memorialize that confirmation in the agency management system.

III. Summaries of Some Significant Cases Affecting Agents' Duties.

A. *Mladineo v. Schmidt*, 52 So.3d 1154 (Miss.2010).

1. Line of coverage involved: Homeowners Policy.

2. Position of person in the agency involved: Agent.

3. Personal or Commercial Lines: Personal Lines.

4. Type of Coverage involved: Wind and Flood.

5. Procedural or knowledge-based error: Knowledge Based.

6. Claimant Allegation: The plaintiffs alleged that they had requested "full protection" for their coastal dwelling and other structures from all weather conditions. They stated that their insurance agent advised them that they would need to purchase a "hurricane policy" in order to obtain the requested coverage. Further, the plaintiffs allege that when they inquired of the agent as to whether the purchased policy would cover all wind and water damage, they were assured by the agent that all such damage from any named storm would be covered. The plaintiffs contended that based upon this representation, they chose not to purchase a separate flood insurance policy.

7. Settlement or Trial: At the trial court level, the agent and the other defendants obtained Summary Judgment. This was affirmed in part and reversed in part by the Mississippi Supreme Court.

8. Description of alleged error: The plaintiffs contended that when they inquired of the agent whether a "hurricane policy" would cover all wind and water damage, the agent responded that "since you're not in the flood plain, the bank would not require a separate flood insurance policy."[11] Plaintiffs asserted that based upon this representation, a separate flood insurance policy was not necessary to protect their property.

9. Tip to avoid claim: Agents should refrain from commenting on what coverages may or may not be necessary or recommended, but rather, simply advise the potential insured as to what coverages are available in the market.

10. Summary of Case: The plaintiffs received their homeowner's policy approximately six (6) weeks after it was placed, and under the heading of "Hurricane Coverage," the policy provided as follows:

> [c]overage under this policy includes loss or damage caused by the peril of windstorm during a hurricane. It includes damage to a building's interior or property inside a building caused directly by rain, snow, sleet, hail, sand or dust if direct force of the windstorm first damages the building causing an opening through which the above enters and causes damages.
>
> *Hurricane coverage does not include loss caused by flooding, including but not limited to flooding resulting from high tides or storm surges.*[12]

Further, in the "Property Exclusions" section, the policy provided:

> [w]e *do not cover* loss to any property resulting directly or indirectly from any of the following. (Sic). Such a loss is excluded even if another peril or event contributed concurrently or in any sequence to cause the loss. …
>
> … Loss resulting from water or water-borne material damage described below *is not covered* even if other perils contributed directly or indirectly to cause the loss. Water and water-borne material damage means:
>
> > 1) flood, surface water, waves, tidal waves, overflow of a body of water, spray from these, whether or not driven by wind….[13]

The plaintiffs testified that upon receipt of the policy, they filed it away and did not read it, and they had no further conversations with the agent regarding this policy prior to Hurricane Katrina.

On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast and severely damaged the plaintiffs' home and other structures on their property. The plaintiffs filed their claim with the carrier and the claim was denied due to damage caused by water. On appeal, the Mississippi Supreme Court held that even if the agent breached his duty as an insurance agent to procure the coverage requested by the plaintiffs, the proximate cause of their damage was the plaintiffs' silence after receiving their policy that clearly excluded damage caused by flood. The Court stated that if the plaintiffs had exercised their duty to read their policy, they would have noticed the policy clearly did not cover things that they assumed "hurricane policies" would cover, such as damage caused by water. Therefore, the Court concluded that the plaintiffs' silent acceptance of their insurance policy bound them to the policy's terms and conditions. Accordingly, the Court affirmed the dismissal of the plaintiffs' claim against the

agent for negligent failure to procure the appropriate insurance coverage. This is a prime example of why proof of policy delivery to the insured is essential.

However, on the issue of whether the agent breached his duty to the plaintiffs when he advised them that their property was not in a flood plain and counseled them that flood insurance was not required, the Mississippi Supreme Court reversed the trial court and found that it was a jury question. Absent the alleged representation about what coverage was required, the agent would have completely prevailed on this claim. This case demonstrates how an agent's actions can extend his duty beyond that which the law requires.

B. *Great American Ins. Co. of New York v. Lowry Development, LLC,* 576 F.3d 251 (5th Cir. 2009).

1. Line of coverage Involved: Builder's Risk on a Condominium Complex.

2. Position of person in agency involved: Owner and Agent.

3. Personal or Commercial Lines: Commercial Lines.

4. Type of coverage involved: Wind.

5. Procedural or knowledge-based error: Both.

6. Claimant Allegation: This case involves multiple legal issues, but there is one that is particularly applicable to the scope of this article. The insurance agent was not an actual party to this case on appeal. The appeal was only between the insurance carrier and the insured. However, the argument advanced by the carrier was that its notice of reduction in coverage to the agent was sufficient to provide notice to its insured.

7. Settlement or Trial: At the trial court level, the Court found that the policy covered wind damage and it granted partial summary judgment to the insured on that basis. However, the remaining issue was whether the agent and carrier intended to exclude wind coverage, rendering any such coverage in the policy a mutual mistake. This issue was tried to a jury, and the jury found no mutual mistake. A judgment was entered in favor of the insured and against the carrier, and the agent was dismissed with prejudice. In other words, because coverage had been found in favor of the insured, the agent had procured the requested coverage and the insured's professional negligence claim for failure to procure against the agent was dismissed.

8. Description of alleged error: In 2003, the insured procured an insurance policy for the first phase of its condominium project. This policy clearly excluded wind

coverage, and wind coverage was obtained by the agent through the Mississippi Windstorm Underwriting Association. In January of 2004, the insured contacted the same agent and asked for a builders' risk policy for the construction of the second phase of its condominium project. The agent contacted the same broker to obtain the coverage with the same carrier. The broker sent the agent a quote, and then a binder, for this coverage. Both the quote and the binder indicated in the coverage section that the coverage was "All Risk Excl. Earthquake & Flood."[14] However, both the quote and binder also contained language in the conditions section indicating that the policy excluded coverage for wind. Ultimately, when the carrier issued its policy, the policy did not contain an exclusion for wind. The carrier contended that this was a clerical mistake that occurred when the policy information was entered into its system.

Three months later, in April of 2004, the carrier issued a wind exclusion endorsement and this endorsement was sent by the broker to the agent, not the insured. There was no premium credit given to the insured in exchange for this endorsement. The policy was scheduled to expire in January of 2005, but since construction was not complete on this phase of the project, the agent requested a six month coverage extension. Following this request, the broker sent the agent a renewal policy, which contained a wind exclusion endorsement. This policy was then extended for an additional ninety days, and was in effect when Hurricane Katrina caused extensive damage to the project. The ultimate question before the court became whether a carrier sending a notice of a reduction in coverage only to the agent for the insured, and not directly to the insured, satisfies Mississippi's notice statute. Despite the clear and unambiguous language of the statute requiring the insurer to give notice to the insured of a reduction in coverage, the United States Court of Appeals for the Fifth Circuit held that notice to the agent was sufficient.

9. Tip to avoid claim: Unless and until the Mississippi Supreme Court holds that the decision in this case was erroneous, agents may want to provide notification to their customers of such reductions in coverage. It would be preferable that such notice be in writing and entered into the agency management system. The legislature should be encouraged to amend the statute to clarify even further that it is the duty of the carrier to give notice of a cancellation, non-renewal or reduction in coverage directly to the insured, and that notice of such events, given only to the agent, are insufficient.

10. Summary of case: Mississippi Code Ann. § 83-5-28(1) provides as follows:

> [a] cancellation, reduction in coverage or nonrenewal of liability insurance coverage, fire insurance coverage or single premium multiperil insurance coverage is not effective as to any coverage issued or renewed after June 30, 1989, unless notice is mailed or delivered to the insured and to any named

> creditor loss payee by the insurer not less than thirty (30) days prior to the effective date of such cancellation, reduction or nonrenewal.[15]

Based upon the plain language of the statute, the district court held "[t]he statute unequivocally requires that the notice be sent by the insurer to the insured, and delivery to the insured's agent does not conform to this statutory requirement."[16] Unfortunately, on appeal, and contrary to the plain language of the Mississippi statute, the Fifth Circuit Court of Appeals held as follows:

> there is no language in Section 83-5-28, nor in any caselaw pointed out to us, to support that this statute should be read as preventing a properly authorized agent from being sent the notice that is required. We interpret the statute as allowing agents to receive the notice. There is no dispute that the notice of the new policy language was sent to [the agent].[17]

The Fifth Circuit concluded that the April 2004 endorsement excluding wind, as a covered peril, that was sent from the broker to the agent only, and not the insured, was sufficient to remove wind as a covered peril from the policy in question.

Absent some clarifying amendment to the statute, perhaps the Mississippi Supreme Court, if given an opportunity, will correct the holding of the Fifth Circuit and find that the clear language of the statute provides that any cancellation, nonrenewal or reduction in coverage by the insurance carrier must be transmitted directly by the carrier to the insured, and that notice to the agent is insufficient.

C. *Honeycutt v. Coleman*, 120 So.3d 358 (Miss. 2013).

1. Line of coverage Involved: Automobile Policy.

2. Position of person in agency involved: Agent.

3. Personal or Commercial Lines: Personal Lines.

4. Type of coverage involved: Uninsured Motorist.

5. Procedural or knowledge-based error: Neither. This error was created by the Court's Opinion and is an example of how judicial decisions can change an agent's duty to the insured.

6. Claimant Allegation: The plaintiff alleges that the waiver of uninsured motorist coverage signed by his father, the insured, was not knowingly and intelligently given.

7. Settlement or Trial: The trial court determined that the agent did not have a duty to explain uninsured motorist coverage to the plaintiff's father and as such granted summary judgment in favor of the insurance carrier.

8. Description of alleged error: This is once again a case where the insurance agent is not a party to the appeal. However, the agent's actions and/or inactions are at issue. In this case, the plaintiff's father, the insured, signed a waiver of uninsured motorist coverage. The plaintiff was involved in an automobile accident for which there was no other insurance coverage, and filed an uninsured motorist's claim with his parents' automobile insurance carrier. Mississippi law gives an insured the right to purchase uninsured motorist's coverage, and provides that if the insured chooses to reject the coverage, the insured must reject the coverage in writing. In this case, the plaintiff's father acknowledged signing the waiver of uninsured motorist's coverage, but contended that he did not knowingly waive the coverage. Accordingly, the alleged error by the agent was that he did not explain uninsured motorist's coverage to the insured.

9. Tip to avoid claim: Unfortunately, it appears that the only way to avoid this type of claim is for the insured to admit that he understood uninsured motorist's coverage and waived it. If the insured claims he did not understand the coverage and the waiver form was just slid in front of him to sign, without explanation, and he did not read it, then, according to this case, that is sufficient evidence for the case to go to the jury. It seems that the only way to avoid going to a jury verdict on a similar claim is to videotape the explanation of uninsured motorist's coverage and the insured's acknowledgement of it. Of course, this is extremely impractical, if not impossible.

10. Summary of case: In this matter, the court analyzed the statute and its previous holdings in *Aetna Casualty and Surety Company v. Berry*, 669 So.2d 56 (Miss. 1996) and *Owens v. Mississippi Farm Bureau Casualty Insurance Company*, 910 So.2d 1065 (Miss. 2005). Ultimately, the *Honeycutt* court held as follows:

> [f]irst, any waiver of UM coverage must be made knowingly and intelligently, and the waiver must be in writing. Second, the insurance carrier bears the burden of proving that any waiver of UM coverage was made knowingly and intelligently. Third, the insurance carrier may meet that burden of proof by establishing that it provided an explanation, ***appropriate to the client***, of UM coverage. The insurance carrier also may establish that the client was fully knowledgeable through other sources of the purposes and benefits of UM coverage. ***Fourth, any document signed by the client which allegedly states that an explanation was given to the client may be considered by the fact finder, but this is not dispositive as to whether the client gave a knowing and intelligent waiver of UM coverage.*** Fifth, the client may rebut, through appropriate evidence, any

> proof offered by the carrier. ***And sixth, whether a client made a knowing and intelligent waiver of UM coverage ultimately is a question of fact to be resolved by the trier or fact.***[18]

The ultimate effect of the court's holding in this matter is that even a well-drafted waiver of uninsured motorist's coverage, signed by the insured, is not sufficient for the agent to be successful on a motion for summary judgment. Essentially, the court holds that when the issue is whether an insured knowingly and intelligently rejected uninsured motorist's coverage, it will be a question for the jury.

Fortunately, following this decision, Mississippi Senator Dean Kirby submitted a proposed amendment to the statute which provides in pertinent part as follows:

> (4) [i]n the course of the sale or issuance of any automobile liability insurance policy, insurers shall inform the named insured or applicant, on a form approved by the Department of Insurance, of the benefits of and reasons for electing to purchase uninsured motorist coverage. If the insured named in the policy wishes to reject uninsured motorist coverage, such form shall be signed by or on behalf of the named insured. If this form is signed by or on behalf of the named insured, it is binding upon all persons insured by the automobile liability insurance policy ***and it shall be presumed that there was an informed, knowing rejection and waiver of uninsured motorist coverage***.[19]

This amendment was approved by the Mississippi legislature on March 24, 2014 in the form proposed by Senator Kirby. The amendment shall take effect on July 1, 2014, but until then, the *Honeycutt* decision is controlling law. It should be noted that in Mississippi, a presumption in the law is rebuttable. Only further interpretation by the Supreme Court will provide insight as to whether or not this amendment will accomplish its goal of legislatively overruling *Honeycutt*.

D. *Booker v. American General Life & Accident Ins. Co.*, 257 F.Supp.2d 850 (S.D. Miss. 2003).

1. Line of coverage Involved: Life Insurance Policy.

2. Position of person in agency involved: Agent.

3. Personal or Commercial Lines: Personal Lines.

4. Type of coverage involved: Life Insurance.

5. Procedural or knowledge-based error: Knowledge Based.

6. Claimant Allegation: The plaintiffs allege that they purchased life insurance policies through their insurance agent and that each plaintiff paid a separate additional premium in order to purchase a waiver of premium benefit provision. This provision provided that in the event the insured becomes disabled, the payment of future premiums shall be waived by the insurance carrier upon receipt of the insured's proof of disability. The waiver of premium benefit provision included an exclusion whereby the premiums would not be waived if the insured was disabled when the policy was issued. The plaintiffs allege that the insurance agent defendants were liable to them for breach of a fiduciary duty because the agent either knew that the plaintiffs were disabled when they purchased their policy or the agents were aware that the plaintiffs became disabled during the policy period, but continued to collect premiums from plaintiffs.

7. Settlement or Trial: The trial court found that the insurance agent defendants had not breached any fiduciary duty to the insureds and dismissed the plaintiffs' claims against the agents with prejudice.

8. Description of alleged error: In this case, there were plaintiffs who were disabled when they bought their policies and plaintiffs who became disabled after they bought their policies. The plaintiffs who were disabled when they purchased their insurance policies alleged that the agents failed to disclose to them that they were paying a premium for a benefit that would not be honored due to a policy exclusion. The plaintiffs who became disabled after their policies were issued alleged that the agents failed to disclose to the plaintiffs that they could invoke the premium waiver benefit provision of their policies and cease paying premiums. Plaintiffs contended that the agents owed them a fiduciary duty and that they breached that duty.

9. Tip to avoid claim: The purchase of insurance is an arm's length transaction and should be treated as such. Unless an agent intends to create a fiduciary or special relationship, the agent should avoid engaging in conduct that creates such a relationship as described below.

10. Summary of case: In this case, there were several individual plaintiffs; therefore, each plaintiff advanced a different factual scenario for claiming that he had a special or fiduciary relationship with his insurance agent, and that the agent breached that duty. In analyzing the facts in this case, the District Court acknowledged that in Mississippi, the purchase of insurance is deemed to be an arm's length transaction[20] and that no fiduciary relationship exists between the insurer and the insured, or between the agent of the insurer and the insured, in the context of a first-party insurance contract.[21] In analyzing the various theories advanced by plaintiffs, the court pointed out the following factors that had been

established by the Mississippi Supreme Court to establish a fiduciary relationship, albeit not in the insurance agent context:

> The court stated that such a relationship may exist where '[1] the activities of the parties go beyond their operating on their own behalf, and the activities for the benefit of both; [2] where the parties have a common interest and profit from the activities of the other; [3] where the parties repose trust in one another; and [4] where one party has dominion or control over the other.'[22]

The plaintiff with the most compelling argument to establish a special relationship giving rise to a fiduciary duty had known her insurance agent for twenty-six years, attended the same church as her insurance agent, shared numerous meals with the agent at both her house and her mother's home, and essentially testified that the agent was like a family member. Additionally, the insured stated that the agent had previously sold insurance policies to other members of her family and that she trusted him to fully explain to her any insurance policy which she purchased from him. The court found that the fact that the parties involved knew each other socially did not elevate the arm's length transaction of the sale of insurance to the level of a fiduciary relationship. Further, the court commented that the record indicates that no plaintiff relied on any agent for any type of business or financial advice, except for the purchase of an insurance policy.

The court concluded:

> [t]he courts must not be blind to the realities of the world. Insurance agents are placed in a position to serve two masters, their employer and their customer. Clearly, agents owe a duty to their employer. Insurance agents have a duty to sell insurance policies offered by their employers. Most agents are involved in their communities. Most agents have friends and social acquaintances. Most agents undoubtedly attempt to sell policies to these friends and social acquaintances, as well as to other people met through their community connections. The law does not elevate each such transaction to the level of a fiduciary relationship.[23]

IV. Conclusion.

As the case summaries set forth hereinabove indicate, an insurance agent's duty is not capable of being defined in a one-size-fits-all definition. The duty will be dependent upon the facts and circumstances of each particular claim. The basic underlying duty of reasonable care can be expanded by the actions or statements of the agent and the relationship the agent has with the insured. Obviously, since duty is a legal question to be decided by the courts, the duties can be expanded by judicial interpretation. What is an insurance agent's duty in the State of Mississippi? The obvious answer is "it depends."

[1] *Ritchie v. Smith*, 311 So.2d 642, 646 (Miss. 1975).
[2] *First United Bank of Poplarville v. Reid*, 612 So.2d 1131, 1137 (Miss. 1992) (*citing McKinnon v. Batte*, 485 So.2d 295, 297 (Miss. 1986); *Security Insurance Agency, Inc. v. Cox,* 299 So.2d 192, 194 (Miss. 1974)).
[3] *Mladineo v. Schmidt*, 52 So.3d 1154, 1163 (Miss. 2010).
[4] *Id.*
[5] *Great American Ins. Co. of New York v. Lowry Development, LLC*, 576 F.3d 251, 257 (5th Cir. 2009).
[6] *Honeycutt v. Coleman,* 120 So.3d 358, 363 (Miss. 2013).
[7] *Booker v. American General Life & Accident Ins. Co.*, 257 F.Supp.2d 850, 856 (S.D. Miss. 2003).
[8] *Haggans v. State Farm Fire and Cas. Co*., 803 So.2d 1249, 1252 (Miss. App. 2002) (*citing Cherry v. Anthony, Gibbs & Sage,* 501 So.2d 416, 419 (Miss. 1987)).
[9] *Scotty's Recycling, LLC v. Philadelphia-Security Insurance*, 2013 WL 4804833, *5 (S.D. Miss. 2013).
[10] *Hutton v. American General Life & Acc. Ins. Co.,* 909 So.2d 87, 95 (Miss. App. 2005).
[11] *Mladineo*, 52 So.3d at 1162.
[12] *Id*. at 1157 (emphasis in original).
[13] *Id*. (emphasis in original).
[14] *Lowry*, 576 F.3d at 252.
[15] *Id.*
[16] *Id*. at 255.
[17] *Id*. at 257.
[18] *Honeycutt*, 120 So.3d at 363 (emphasis added).
[19] Mississippi Legislature Committee Substitute for Senate Bill No. 2733 (emphasis added).
[20] *Booker*, 257 F.Supp.2d at 856 (*quoting Langston v. Bigelow*, 820 So.2d 752, 756 (Miss. App. 2002)).
[21] *Booker*, 257 F.Supp.2d at 856 (*citing Bass v. California Life Ins. Co.*, 581 So.2d 1087, 1090 (Miss. 1991)).
[22] *Booker*, 257 F.Supp.2d at 860 (*quoting University Nursing Associates, PLLC v. Phillips*, 2003 WL 328034, *2 (Miss. 2003)).
[23] *Booker*, 257 F.Supp.2d at 861.

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