

Agents E&O Standard of Care Project Wyoming 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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John Nesbitt
Westport Insurance Corporation
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via email: John_Nesbitt@swissre.com

Re: Wyoming's Standard of Care

Dear Mr. Nesbitt:

Below please find my analysis regarding the standard of care for insurance agents and brokers.

1. Summary of standard of care in Wyoming

In Wyoming, an insurance broker is the agent of the insured and owes him a duty to exercise reasonable skill and diligence in his performance. *Gordon v. Spectrum, Inc.*, 981 P.2d 488, 492 (Wyo. 1999). Furthermore, an agent who undertakes to procure insurance for another and negligently fails to do so, will be held liable for any resulting damages. See *Hursh Agency, Inc. Wigwam Homes Inc.*, 664 P.2d 27, 32 (Wyo. 1983). The agent's liability may arise in either breach of contract or negligence claims. *Id.*

That said, the agent has several strong defenses should a claim arise. Insurance agents have avoided liability by claiming that the insured should have read the policy. Essentially, if the insured believes that he was underinsured or that his agent had ordered the wrong policy, he has a duty to read the policy and alert the agent of any changes that he wants made. *Ohio Cas. Ins. Co. v. W.N. McMurry Const. Co.*, 230 P.3d 312 (Wyo. 2010).

Although not specifically ruled upon in Wyoming there have been some recent issues regarding whether the insurance agent has a duty to advise the insured on the type and quantity of insurance to order. However, there is a considerable amount of case law to support the proposition that the insured and not the insurance agent, is in the best position to determine what the appropriate amount of coverage is. *See, e.g., Sadler v. Loomis Co.*, 776 A.2d 25 (Md. App. 2001). In fact, it appears that the general rule is that an insurance agent does not have a duty to advise the insured as to the proper amount of liability coverage.

2. Case Studies from your experience

I. *Company v. Agency*

a. Line of coverage involved.

Commercial Vehicle Coverage

b. Position of person in the agency involved.

Insurance Agent and Account Manager

c. Personal or Commercial Lines.

Commercial

d. Type of coverage involved.

Physical Damage Policy

e. Procedural or knowledge-based error.

Both procedural and knowledge-based error

f. Claimant Allegation.

The claimant alleged that after his vehicle was damaged, his insurance agent told him that the insurance company would cover the claim. The insurance agent also went on to promise that the insurance company would cover the mileage costs of transferring the vehicle to the repair shop and other “down time.” Unfortunately, most of these expenses were not covered by the policy. The insured claimed that these promises created a contract between the agent and the insured.

g. Settlement or Trial.

The agent won. The court dismissed Company’s case on summary

judgment and the case was affirmed on appeal.

h. Description of alleged error.

The insurance agent should not have promised that certain items were covered by the policy when those items were specifically excluded.

i. Tip to avoid claim.

Do not make any promises of coverage. Simply take the claim and pass it on to the insurance company.

j. Summary of case.

The claimant alleged that after his vehicle was damaged, his insurance agent told him that the insurance company would cover the claim. The insurance agent also went on to promise that the insurance company would cover the mileage costs of transferring the vehicle to the repair shop and other “down time.” Unfortunately, most of these expenses were not covered by the policy. The insured claimed that these promises created a contract between the agent and the insured.

Fortunately, the agent won on the ground that the agent is not a party to the policy between the Insurance Company and the insured. The court also found that these minor interactions with the agent were not enough to create a contract between the agent and the insured.

Potential Claim against Insurance Agency

a. Line of coverage involved.

Home & Auto.

b. Position of person in the agency involved.

Insurance Agent

c. Personal or Commercial Lines.

Personal

d. Type of coverage involved.

General Liability Policy

e. Procedural or knowledge-based error.

Procedural

f. Claimant Allegation.

Failure to advise the insured that he should have purchased higher policy limits.

g. Settlement or Trial.

Fortunately, the potential plaintiff decided to not file suit.

h. Description of alleged error.

Failure to advise the insured that he needed additional insurance to protect his assets. The insured selected minimal coverage, but he had an estate in excess of \$1,000,000.

i. Tip to avoid claim.

Have some documentation saying that the insurance agent does not know the details of the insured's assets and it is the insured's duty to select the right coverage that will protect the insured's assets. There should be some documentation showing the various coverage limits so that the insured is able to make an informed choice.

j. Summary of case.

The insured went into the agency and selected minimal home and auto coverage, despite the fact that he had assets and bank accounts in excess of \$1,000,000. Shortly thereafter, the insured was involved in a serious car accident and the driver of the other car filed suit. Policy limits were immediately paid and the Plaintiff proceeded to seize the insured's home, bank accounts, and other vehicles. The insured sent a demand letter requesting compensation from the agency alleging that the agency did not properly advise him on what coverage he should have selected. Fortunately, we were able to convince the Plaintiff not to file suit based on the general rule that the agent does not have a duty to advise.

Insurance Agency (Case currently pending)

a. Line of coverage involved.

Auto

b. Position of person in the agency involved.

Insurance Agent

c. Personal or Commercial Lines.

Personal

d. Type of coverage involved.

Liability, Collision, Uninsured/Underinsured

e. Procedural or knowledge-based error.

Procedural

f. Claimant Allegation.

The Claimant alleged that the insurance agent told him that he had procured a policy for him before he took his car on his vacation. Sadly, the agent spoke out of turn. In fact, the insurance company had not issued the policy at the time the insured had embarked. The insured went on vacation and was involved in a fatal car accident. The insurance company is refusing to cover the claim because the policy was not in force when the insured left – despite what the agent had told him. The insured is looking to the agent to cover the damages because the agent told the insured he had coverage before he left.

g. Settlement or Trial.

This case is still pending.

h. Description of alleged error.

The agent told the insured to go ahead and take his car on vacation when in fact the insurance company had yet to issue a policy.

i. Tip to avoid claim.

Do not tell an insured that he has coverage when in a policy has not been issued. Make sure the insured has coverage before you tell the insured that he/she has coverage.

j. Summary of case.

The Claimant alleged that the insurance agent told him that he had procured a policy for him before he took his car on his vacation. Sadly, the agent spoke out of turn. In fact, the insurance company had not issued the policy at the time the insured had embarked. The insured went on vacation and was involved in a fatal car accident. The insurance company is refusing to

cover the claim because the policy was not in force when the insured left – despite what the agent had told him. The insured is looking to the agent to cover the damages because the agent told the insured he had coverage before he left.

This may be a difficult case because the agent cannot fall back on the defense that the insured had a duty to read the policy, because the policy had yet to be issued. The agent may be required to indemnify the insured.

Yours very truly,

Anna Reeves Olson