

Agents E&O Standard of Care Project Arkansas 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.



Big “I”
**PROFESSIONAL
LIABILITY**

Swiss Re



Corporate Solutions

Disclaimer: This document is intended to be used for general informational purposes only and is not to be relied upon or used for any particular purpose. Swiss Re shall not be held responsible in any way for, and specifically disclaims any liability arising out of or in any way connected to, reliance on or use of any of the information contained or referenced in this document. The information contained or referenced in this document is not intended to constitute and should not be considered legal, accounting or professional advice, nor shall it serve as a substitute for the recipient obtaining such advice. The views expressed in this document do not necessarily represent the views of the Swiss Re Group (“Swiss Re”) and/or its subsidiaries and/or management and/or shareholders.

Memorandum

To: John Nesbitt

From: Ed Lowther
Kathryn Irby

Date: April 23, 2014

Re: SWISSRE/Standard of care for an insurance agent

Summary of Arkansas law

Arkansas law requires insurance agents to exercise reasonable skill, care, and diligence in performing their duties as insurance agents. *Williams-Berryman Ins. Co. v. Morphis*, 249 Ark. 786, 461 S.W.2d 577 (1971) (adopting 43 Am. Jur. § 178) (where an insurer is solvent at the time of issuance of the policy, an agent will not be held to have violated the standard of care if the insurer later becomes insolvent and cannot pay a claim); *Lawrence v. Francis*, 223 Ark. 584, 267 S.W.2d 306 (1954) (where an insurance agent undertakes to procure insurance on behalf of another, the law imposes a duty to exercise reasonable care in performing such obligation, and where the agent fails to do, the agent may be held liable for the resulting loss).

However, Arkansas courts have carved out an exception to the insurance agent's standard of care by holding that, in the absence of a special relationship, an insurance agent does not have a duty to advise or inform an insured as to the insured's insurance coverage. *Howell v. Bullock*, 297 Ark. 552, 764 S.W.2d 422 (1989); *Buelow v. Madlock*, 90 Ark. App. 466, 206 S.W.3d 890 (2005). Instead, in the absence of a special relationship, the insured is responsible for educating himself or herself concerning matters of insurance. *Id.* A special relationship exists where an agent and an insured have an "established and ongoing relationship" over a period of time, with the agent "actively involved in the [insured's] business affairs, and regularly giving advice and assistance in maintaining the proper coverage" for the insured. *Stokes v. Harrell*, 289 Ark. 179, 711 S.W.2d 755 (1986).

Relevant Case Law

1. *Stokes v. Harrell*, 289 Ark. 179, 711 S.W.2d 755 (1986).
 - a. Line of coverage involved: Property

- b. Position of person in the agency involved: Agent
- c. Personal or commercial lines: Commercial
- d. Type of coverage involved: Fire
- e. Procedural or knowledge-based error: Knowledge
- f. Claimant allegation: The agent procured coverage based on actual case value of the contents, whereas the insureds claimed that they had requested replacement cost coverage.
- g. Settlement or trial: Trial (directed verdict in favor of agent)
- h. Description of alleged error: The insureds claimed that the agent did not procure the requested coverage.
- i. Tip to avoid claim: Verify coverage requests in writing.
- j. Summary of case: The insureds' agent assisted them in obtaining fire coverage on their business. Several years later, the insureds requested that the agent increase coverage. However, after a fire destroyed the business, the insurer and the insureds were unable to agree on the value of the contents. The insureds' policy provided coverage based on actual cash value, whereas the insureds maintained that they had requested replacement cost coverage. The insureds sued the agent and the insurer, alleging that the agent was negligent for failing to advise them of the difference between replacement cost coverage and actual cash value coverage. The trial court granted the agent's directed verdict motion. On appeal, the Arkansas Supreme Court affirmed the the judgment, holding that there was no special relationship between the insureds and the agent and, thus, the agent had no duty to advise the insureds as to the details of the insureds' coverages.

2. *Scott-Huff Ins. Agency v. Sandusky*, 318 Ark. 613, 887 S.W.2d 516 (1994)

- a. Line of coverage involved: Property
- b. Position of person in the agency involved: Agent
- c. Personal or commercial lines: Commercial
- d. Type of coverage involved: Named perils
- e. Procedural or knowledge-based error: Knowledge
- f. Claimant allegation: The insured alleged that the agent failed to procure the requested coverage and/or failed to advise regarding the scope of the policy's coverages.
- g. Settlement or trial: Trial
- h. Description of alleged error: The insured claimed that the agent did not procure the requested coverage and/or that the agent failed to advise the insured on the scope of the coverage provided by the procured policy.
- i. Tip to avoid claim: Verify coverage requests in writing.

- j. Summary of case: The insured financed the purchase of a crane through a bank. The bank required that the crane be insured. There was some dispute as to the requested coverage, but it is undisputed that a “named perils” policy was issued and received by the insured. The crane was later damaged, and the insured’s claim was denied because it was not one of the “named perils” covered by the policy. A jury returned a verdict in favor of the insured. The Arkansas Supreme Court reversed, holding that the insured has a duty to educate himself or herself concerning matters of insurance, and should have known the crane was not covered for this particular loss.
3. *Williams-Berryman Ins. Co. v. Morphis*, 249 Ark. 786, 461 S.W.2d 577 (1971).
- a. Line of coverage involved: Property
 - b. Position of person in the agency involved: Agent
 - c. Personal or commercial lines: Unknown
 - d. Type of coverage involved: Fire
 - e. Procedural or knowledge-based error: Procedural
 - f. Claimant allegation: The insured alleged that the agent was liable for the amount of the claim where the insurer became insolvent after issuance of the policy.
 - g. Settlement or trial: Trial
 - h. Description of alleged error: The insured claimed that the agent had a duty to procure coverage from solvent insurers.
 - i. Tip to avoid claim: Verify solvency of insurer prior to issuance of policy.
 - j. Summary of case: The insureds procured fire insurance to protect real property. However, after issuance of the policy but before a fire loss claim was made by the insureds, the insurer became insolvent. and was unable to pay the claim. A jury found the agent liable. The Arkansas Supreme Court reversed, holding that “an insurance agent or broker is not a guarantor of the financial condition or solvency of the company from which he obtains the insurance.” Instead the agent is only required to exercise reasonable care, skill, and judgment as to the “security or indemnity for which the insurance is sought.”