

Agents E&O Standard of Care Project

Idaho 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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LEGAL STANDARD OF CARE FOR INSURANCE AGENTS IN IDAHO

By Michael E. Kelly
Kelly, Talboy & Simmons, P.A.

Unlike a majority of other jurisdictions, Idaho maintains a professional standard of care for insurance agents procuring coverage for clients.

In *McAlvain v. Gen. Ins. Co.*, 554 P.2d 955, 97 Idaho 777 (1976), the Idaho Supreme Court determined that insurance agents have a general duty to use reasonable skill, care and diligence to procure insurance requested by a client. The Court reasoned that since an agent holds himself out as an insurance expert just by being an agent, an insured naturally relies on that expertise when purchasing insurance. Therefore, the Court deemed that insurance agents should be held liable for their negligence, just like other professionals such as doctors, attorneys, architects and engineers.

The court went on to hold that an insurance agent's duty includes advising and instructing clients about different types of coverage, higher limits, and the benefits of each. An agent that is asked to provide "complete" coverage, who knows or reasonably should know that the amount/type of insurance necessary to effect "complete" coverage, and fails to procure adequate insurance to the client, will be held liable for the failure to do so.

In *McAlvain*, the Court held that a tort action arising from a negligent breach of professional duty to provide insurance existed after Plaintiff had requested insurance sufficient to cover his business inventory and the agent failed to do so. An appraisal showed that McAlvain's inventory was worth \$45,000.00, but the agent procured a policy with only a \$30,000.00 limit. Subsequent to binding the coverage, McAlvain's store was gutted by fire and the inventory was almost completely destroyed.

In other pertinent agent cases decided by the Idaho Supreme Court, the Court has held in *Keller Lorenz Co. v. Insurance Assoc. Corp.*, 570 P.2d 1366, 98 Idaho 678 (1977) that both a tort cause of action in negligence and a breach of contract action can exist against insurance agents for failing to adequately insure the claimant's property. The Court has also determined that it is the duty of the agent to inform the insured what coverage he is obtaining, not the duty of the insured to seek out exclusions or limitations not revealed to him. *Foremost Ins. Co. v. Putzier*, 627 P.2d 317, 102 Idaho 138 (1981).

In a case addressing an insurer's obligations for the acts of an agent, the Idaho Supreme Court held that an insurance agent, who is cloaked with apparent authority to process claims, prevents an insurer from denying responsibility for any errors committed by that agent in notifying the insurer of the claim. Notice to the agent is imputed to the insurer regardless of the agent's failure to follow proper procedure in notifying the insurer. *Kootenai County v. Western Casualty and Surety Co.*, 750 P.2d 87, 113 Idaho 908 (1988).

As noted by the time frame of these decisions, Idaho case law has been established for quite a while and there does not appear to be any developments on the horizon that would indicate the Idaho Supreme Court is preparing to loosen the high standard of care placed on insurance agents in this state.

Case Studies

Case Study No. 1

- A. Line of Coverage involved: General Liability/Inland Marine
- B. Position of person and agency involved: Agent
- C. Commercial Lines Coverage
- D. Type of Coverage: Property Liability
- E. Knowledge Based Error
- F. Allegation of Claimant:

Plaintiff brought suit against agent and agency after it sustained a loss that was not covered under its CGL policy. It contends that the agent breached his standard of care by failing to recommend a particular type of insurance policy that would have provided coverage for loss. i.e., builders risk/installation floater coverage

- G. Case Settled after mediation
- H. Description of Alleged Error: Failure to provide requested coverage
- I. Tip to Avoid Claim: Better understanding of coverages and client needs by agent
- J. Summary of Case:

Plaintiff sued agency for negligence after carrier denied claim for the cost to repair and replace a pond liner it had torn on the property of one of its clients under the “your work” and “your product” exclusions in the CGL policy. It is undisputed that the CGL policy itself provided to the client was appropriate, but the type of loss sustained under the policy was not covered under CGL policies. Plaintiff contended that the agent should have recommended a builder’s risk policy/installation floater that would have provided coverage for the materials and man hours utilized for reconstruction of the pond at issue.

Case Study No. 2

- A. Line of Coverage involved: Dwelling Property
- B. Position of person and agency involved: Agent/Owner
- C. Personal Lines Coverage
- D. Type of Coverage: Homeowners coverage
- E. Knowledge Based Error
- F. Allegation of Claimant:

Plaintiff alleged that the agent breached his duty by not providing coverage set forth in the homeowner’s policy she purchased for a mobile home.

- G. Case was dismissed against the agent but not the carrier.
- H. Description of Alleged Error:

Plaintiff was offered a homeowner's form 3 policy for a higher premium but purchased a homeowner's form 1 policy with limited coverage. Plaintiff received a copy of the homeowner 3 policy from the carrier by mistake and subsequently sustained a water damage claim not covered under the HO1 policy.

I. Tip to Avoid Claim:

More thorough documentation in the client file would have potentially prevented the lawsuit from being filed despite the fact the agent was eventually dismissed from the lawsuit.

J. Summary of Case:

After purchasing her homeowner's coverage and receiving a copy of the policy text from the carrier, Plaintiff was subsequently advised that she received the wrong policy and that the correct policy did not cover her water damage. Since plaintiff did not pay the premium on the homeowner 3 policy, her claim was denied. Agent was nevertheless dismissed from the lawsuit as there was no breach of the standard of care by the agent.

Case Study No. 3

- A. Line of Coverage involved: Dwelling Property
- B. Position of person and agency involved: Agent/Owner
- C. Personal Lines Coverage
- D. Type of Coverage: Homeowners coverage
- E. Knowledge Based Error
- F. Allegation of Claimant:

Plaintiffs allege that the agent failed to maintain coverage on their home as directed and as the result were uninsured for a fire that took place in their garage.

G. Case settled

H. Description of Alleged Error:

Plaintiffs alleged that the agent was negligent and intentionally breached the duty owed by failing to procure the necessary insurance and effectively leaving the plaintiffs uninsured for a fire loss.

I. Tip to Avoid Claim:

Better documentation and communication with insured in regard to the needs of the client.

J. Summary of Case

Agent procured insurance through a carrier who subsequently requested photographs of the plaintiffs' property. Plaintiffs believe that the agent submitted the photographs as requested however the photographs were not submitted on timely basis. As such, the carrier forwarded a cancellation notice to the plaintiffs. Plaintiffs then contacted the agent who advised that they would take care of the situation. Plaintiffs believed that the issue had been resolved and coverage through the insurer was in force. Subsequently, the aforementioned fire destroyed the Plaintiffs' garage and they learned there was no coverage.

Case Study No. 4

- A. Line of Coverage involved: Automobile
- B. Position of person and agency involved: Agent
- C. Commercial
- D. Type of Coverage: Uninsured motorist
- E. Knowledge Based Error
- F. Allegation of Claimant:

Plaintiff alleges he purchased automobile coverage through his agent for his business which should have included UIM coverage. Subsequent to an accident with an uninsured driver, Plaintiff's spouse was killed and his 3 children were injured.

- G. Case settled at mediation
- H. Description of Alleged Error:

Plaintiff alleges that his agent knew or should have known that he required UIM coverage based on previous conversations and based on his history of providing coverage to the Plaintiff. In his capacity as agent, he had an obligation to provide advice and counsel regarding the purchase, renewal and replacement of insurance products including the amount and types of coverage available. Specifically in this instance, Plaintiff relied upon the agent regarding the purchase of auto coverage for his business, which should have included UIM coverage.

- I. Tip to Avoid Claim:

Clear communication with the insured and documentation of any meetings regarding the offers of particular coverage specifically UM/UIM. Additionally file documentation which would have identified whether the Plaintiff accepted or declined coverage would have been helpful.

- J. Summary of Case:

Plaintiff purportedly met with agent to purchase replacement insurance on his vehicles some of which had been insured through personal lines coverage. Plaintiff allegedly advised agent to provide full coverage on all autos similar to the coverage he had on the policy that was to be replaced. It is further alleged that the agent knew or should

have known that Plaintiff required the UIM coverage based on previous conversations. At the time of the loss, Plaintiff's personal insurance coverage had lapsed and it would appear that the agent was not in position to place or provide UIM coverage to the Plaintiff's children for the accident at issue under a business policy. Nevertheless, agent had no record to support his position that he was unable to provide the coverage purportedly requested by the Plaintiff.