Agents E&O Standard of Care Project

Iowa 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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A SUMMARY OF IOWA LAW GOVERNING INSURANCE AGENTS' DUTIES AND OBLIGATIONS

The General Duty:

In Iowa, an insurance producer has a duty to use reasonable and ordinary care, diligence and judgment in obtaining the insurance requested by a customer.

This has been the firmly-established duty of an insurance producer in Iowa since at least 1974 when this duty was set forth by the Iowa Supreme Court in *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457 (Iowa 1984). Since at least then, this has meant that Iowa is essentially an "order-taker" state.

In response to a 2010 decision of the Iowa Supreme Court overruling *Sandbulte*, the Iowa legislature abrogated this decision and codified this law with the following statute:

> Iowa Code § 522B.11(7)
>
> a. Unless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are limited to those duties and responsibilities set forth in *Sandbulte v. Farm Bureau Mut. Ins. Com.,* 343 N.W.2d 457 (Iowa 1984).

> b. The general assembly declares that the holding *of Langwith v Am. Nat'l Gen. Ins. Co.,* (No 08-0778) (Iowa 2010) is abrogated to the extent that it overrules *Sandbulte* and imposes higher or greater duties and responsibilities on insurance producers than those set forth in *Sandbulte*.

This statute, codifying the law previously articulated in *Sandbulte,* means that an Iowa insurance producer owes only the general duties set forth above unless both of the criteria in subsection a. of the above statute are present. Thus, absent these criteria, an insurance producer owes no duty to advise a customer on his/her insurance needs, risks, or exposures; ferret out gaps in coverage; determine the adequacy of a policy's coverage or insure that the coverage meets the customer's needs.

Comparative Fault:

In addition to the above general duty of an insurance producer, Iowa law imposes a similar duty on a policyholder. In a suit where a policyholder is alleging a breach of an insurance producer's general duty set fourth above, Iowa law imposes upon the policyholder the duty to know and be generally familiar with the terms of the insurance policy and to use reasonable and ordinary care in the conduct of his/her insurance affairs for his/her own protection. *Collegiate Manufacturing Company v. McDowell's Agency Inc.*, 200 N.W.2d 854 (Iowa 1972).

Although this duty does not impose a strict obligation to read an insurance policy in its entirety, it does require a Plaintiff to familiarize himself with the terms of the policy to the extent that a reasonably prudent person would under the circumstances. If the jury finds that a policyholder/Plaintiff has violated this responsibly, it can impose comparative fault on the policyholder. As assessment of comparative fault in excess of fifty percent defeats recovery entirely.

Proximate Cause:

As with any other tort-based claim, Plaintiff has the burden of proving that the alleged breach of the agent's duty was a proximate cause of some damage. Generally, this is a question of fact for the jury but occasionally in can be resolved in favor of the agent by summary judgment.

A case in point is a suit filed by a small business claiming that it requested but the agent failed to write crime coverage as a part of its business policy. Plaintiff's office manager embezzled company funds. When discovered, Plaintiff required only that its employee reimburse it for the embezzled funds and did not terminate her. When the manager embezzled a much larger sum later, Plaintiff terminated her and filed a claim with its carrier for the loss. This claim was denied since no crime coverage was written.

Since the Defendant agent denied Plaintiff ever requested crime coverage, this would normally set up a factual dispute to be resolved by the jury. Summary judgment was granted to the Defendant, however, because the carrier's crime endorsement, which the agent would have included on the policy if asked, provided, in part:

> Employee dishonesty coverage does not apply to any employee immediately upon discovery by: (1) you . . . of any dishonest act committed by that employee before or after being hired by you.

Even if the jury believed Plaintiff's version of the facts, the carrier would have denied coverage for the claim under these circumstances since Plaintiff was aware of a prior dishonest act of its employee (the first embezzlement).

Expert Testimony:

Under Iowa law, claims against insurance agents alleging a breach of duty to a policyholder are "professional liability" claims which require a Plaintiff to designate a standard of care expert within 180 days after the agent answers the complaint.

The circumstances which require claims against insurance agents to be supported by expert testimony are outlined in *Humiston Grain Co. v. Rowley Interstate Transportation Company, Inc*, 512 N.W. 2d 573 (Iowa 1994). In a typical case where there is a mere fact dispute as to whether or not Plaintiff requested the missing coverage, no expert testimony is required. In cases involving complex business transactions and coverages, however, expert testimony is required to establish that the Defendant agent breached the standard of care owed to the Plaintiff. Thus, in a case where the agent admitted that he told Plaintiff that a policy sold to Plaintiff would be "adequate to satisfy Plaintiff's needs", expert testimony was required to establish that the agent, in the exercise of ordinary care, should have offered or provided Plaintiff the insurance claimed to be missing.

Negligent Misrepresentation:

Plaintiffs have sometimes found a convenient way around Iowa's restrictions on an insurance agent's duty or the necessity of expert testimony to prove a breach of the standard of care by alleging the agent negligently misrepresenting the type, amount, or scope of coverage sold. Although the Iowa Supreme Court has held in cases not involving insurance agents that negligent misrepresentation claims can only be brought against persons in the business or profession of supplying information to others, these claims have often survived directed verdict and were submitted to juries in cases against insurance agents.

When an adverse verdict on such claim was appealed, the Court overruled this prior limitation and held that, in certain cases, insurance agents could be held liable on a negligent misrepresentation theory. *Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W. 2d 91

(Iowa 2012). As a result, the Iowa legislature again came to the aid of Iowa insurance producers with a statute effective July 1, 2014. This statue provides, in pertinent part:

> c. Notwithstanding the holding in *Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W. 2d 91 (Iowa 2012), an insurance producer, while acting within the scope and course of the license provided for by this chapter is not in the business of supplying information to others unless the requirements of paragraph "*a*" relating to expanded duties and responsibilities are met.

This statute should eliminate future negligent misrepresentation claims against Iowa insurance producers.

Sincerely,

JACK WHARTON