

A Nationwide Guide
To the Law Governing
Insurance Producers'
Obligations to Advise
Their Customers

**INSURANCE
PRODUCERS'**

DUTY TO ADVISE



HASSETT GLASSER, P.C.
PROFESSIONAL LIABILITY LAWYERS

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PRODUCERS'**

DUTY — TO — ADVISE

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PRAISE FOR *INSURANCE PRODUCERS' DUTY TO ADVISE*

“Insurance Producers’ Duty To Advise is a reference book every agent in America should have, along with insurers and any law firms involved in insurance litigation. It includes an overview of the legal responsibilities of insurance agents to advise their customers, then breaks down this spectrum of obligations on a state-by-state basis, including case law citations. Based on research conducted over the past decade, I have used this information to inform agents about their responsibilities since the original article was published that has now evolved into this comprehensive reference book. HIGHLY recommended.”

BILL WILSON, CPCU, ARM, AIM, AAM
Author, *When Words Collide: Resolving
Insurance Coverage and Claims Disputes*
Founder & CEO, InsuranceCommentary.com

“With their new publication, **Insurance Producers’ Duty to Advise**, authors Myles Hassett, Jamie Glasser and David Seidman have provided a great resource for insurance agents and brokers in every state in the nation. Their comprehensive compilation of insurance producers’ duties to their customers is helpfully broken down state-by-state and also cites applicable court cases. I found the explanation of complex legal concepts very informative and easy to understand. A terrific tool and valuable reference for the entire insurance industry!”

TERRI S. EDWARDS, CIC, CISR
Executive Vice President
Independent Insurance Agents
and Brokers of Arizona, Inc.

“I have worked with Myles Hassett for more than 20 years and have always felt confident recommending him to our clients and policyholders. Throughout the years, Myles and I have done many E&O risk management presentations and he consistently brings passion and insight to his representation of our insureds, with decades of experience representing insurance agents and brokers. Along with his co-authors, Jamie Glasser and David Seidman, Myles has taken that experience and distilled it into a nationwide guide to the law on insurance producers’ obligations in advising their customers. This guide is an excellent source for insurance professionals and counsel working in the E&O space.”

RICHARD F. LUND, JD
Senior Underwriter
Swiss Re Corporate Solutions

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*Dedicated to our great friend and insurance industry legend,
Lanny L. Hair, CIC, ARM, AAI, RPLU*

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In 2010, we conducted a nationwide survey of the law on insurance producers' duty to advise their customers. That survey was updated in 2020 to identify applicable standards of care and associated liability trends in each of the states. Over 30 new decisions have been included, impacting the law in more than half the states. This book summarizes the results of the survey and provides a detailed analysis for each jurisdiction.

Consumers expect insurance producers¹ to be knowledgeable in their field, and generally rely on those producers to obtain an insurance policy appropriate for their expressed needs. State statutes and regulations that govern producer licensing, solicitation and sales mandate the minimum level of knowledge and ability producers must exhibit. Yet despite consumer expectations and a high level of regulation, the law in most states does not automatically impose on insurance producers a duty to advise their customers about their insurance needs.

The law governing insurance producers' duty to advise customers varies widely from state to state. Some states hold producers to a professional standard of care that includes an affirmative duty to advise. At the other end of the spectrum, a few states apply an order-taker standard that imposes only an obligation to procure requested coverage without any duty to advise. Most states apply a test that requires finding a "special relationship" before imposing any duty on the producer to advise the client. These states can be categorized into jurisdictions that make it more or less difficult to establish the predicate "special relationship" before the duty to advise arises. The categorization for each state appears on the color-coded map on page 7.

Our analysis includes both captive agents (who write exclusively for one insurer) and independent agents or brokers (who can procure coverage from multiple insurers). Each state's applicable law is summarized starting on page 8, and any distinctions between the standards for captive and independent producers are addressed there. Statutory obligations imposed on licensed insurance counselors or advisors are also analyzed on a state-by-state basis.

¹ Many states use the term "producer" to refer to an insurance intermediary formerly described as an "agent" or "broker." Accordingly, this book refers to "producers" to describe both brokers and agents unless the context requires the traditional distinction.

1 The General Rule: Insurance Producers Must Use Reasonable Skill, Care and Diligence in Procuring Requested Coverage

The law in the 50 states and the District of Columbia provides that producers nationwide owe a similar general duty to their customers to use the degree of skill, care and diligence that a reasonable insurance producer would in the same or similar circumstances to procure the insurance requested by the customer. If the producer cannot obtain the requested insurance, the producer typically has an obligation to notify the customer of the inability to procure in a timely fashion.

In most states, insurance producers' obligations do not include an affirmative duty to advise customers about additional types and limits of coverage unless there is a special relationship between producer and client. A customer's request for "full" or "sufficient" coverage rarely creates the kind of special relationship that imposes an affirmative duty to advise on the producer. However, some courts require producers to clarify a customer's request in those instances. Most states impose the same duty of care on captive producers as on independent producers. The states that treat captive producers differently generally view them as an extension of the insurance company and impute their conduct to the insurer.

2 States That Apply a Professional Standard of Care

A few states have adopted a relatively stringent standard of care in recognition of the fact that licensed producers play a professional advisory role similar to that of an attorney or accountant. To comply with the standard of care in Arizona, Connecticut, and Idaho, a producer may be required to inform the customer about the existence and advisability of additional types and limits of insurance coverage. Each of these states imposes the same standard of care on captive and independent producers.

Arizona requires expert testimony to establish the standard of care and how the producer's conduct breached that standard. Procuring coverage consistent with or better than that requested by the client may nonetheless satisfy any obligation to advise. Idaho allows expert testimony to establish the standard of care, but an insured may prove a breach of the standard simply by showing that the producer failed to procure the coverage about which the insured should have been advised.

3 The “Special Relationship” Test

Many states agree that imposing a blanket affirmative duty on producers to advise about types and limits of available coverage would reward insureds for taking an “intellectual gamble,” benefiting from purchasing less insurance now (for less money), and then later claiming they would have purchased better (and more expensive) coverage if only the producer had advised them to do so. Allowing such a broad duty removes the burden from insureds to determine their own best interests and transforms producers into financial guidance counselors. As a matter of public policy, most states thus require the insured to first establish that the circumstances of the producer-customer relationship were somehow “special” before imposing on the producer a duty to advise.

Courts generally define “special circumstances” as including one or more of the following factors: 1) the producer agrees to advise the customer; 2) additional compensation for advice is paid to the producer beyond the commission received from the insurer; 3) a long-term course of dealing exists between the producer and customer in which the producer is on notice that the customer seeks and relies on the producer’s advice; 4) the producer holds himself or herself out as an expert and the customer relies on that representation; 5) the customer specifically requests advice; or 6) the customer relies on the producer’s representations about coverage.

The states that follow the “special relationship” test fall into three subcategories: A) states that tend to find a special relationship or impose a quasi-professional standard; B) states with no clear preference; and C) states that rarely (if ever) find a special relationship.

A. Broad View of The Special Relationship

The courts in the District of Columbia, Florida, Louisiana, Maryland, Minnesota, Oregon, South Carolina, Texas, Washington, and Wisconsin broadly interpret the facts in finding a special relationship or applying a quasi-professional standard of care. These states impose the same duty and special relationship test on captive and independent producers.

To comply with the standard of care in the District of Columbia, insurance producers must advise their customers about other types of available coverage. Maryland also separately licenses insurance counselors, who specifically review a customer's insurance and provide advice about additional types or limits of coverage that best suit the customer's needs.

Insurance producers in Oregon are required to use reasonable skill, care and diligence to procure the requested coverage, but the insured's request may be inferred from communications with the producer. Oregon also requires producers to explain the extent to which the coverage obtained comports with the coverage requested. A captive producer in Oregon owes no independent duty to advise a customer because she is the agent of the insurer.

B. Case-By-Case Determination of Special Circumstances

There are many middle-ground states with no clear preference for finding or not finding a special relationship. These include Alaska, California, Colorado, Delaware, Hawaii, Iowa, Kentucky, Maine, Massachusetts, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, and South Dakota.

Nebraska requires producers to explain coverage and limits to customers but confines the producer's duty to advise about additional coverage to those instances where a special relationship exists. Nevada separately licenses insurance counselors, who review customers' insurance and advise about coverage types and limits to meet customers' needs. Maine treats captive producers differently than independent producers. Captive producers in Maine owe no duty of care to customers absent fraud, misrepresentation or a separate agreement creating an agency relationship.

C. Narrow View of The Special Relationship Test

Some states have a narrow view of insurance producers' obligations. These states include Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Tennessee, Vermont, Virginia, West Virginia, and Wyoming.

These states generally require insureds to specifically request the insurance that they claim the producer failed to procure. A request for "full" or "adequate" coverage, or for the "best coverage available," does not generally create an obligation for the producer to seek out or procure a specific type of insurance for the customer. These states generally also impose a duty on the insured to read the policy, such that not doing so may preclude the insured's claim against the producer for failure to procure.

Kansas and Virginia require a separate contractual relationship to establish a duty to advise. Without such a contract, the insurance producer has no duty to procure "adequate" coverage or "advise, guide or direct" the insured about coverages. Michigan separately licenses insurance counselors who are charged with reviewing a customer's insurance and providing information and advice about additional types or limits of coverage that best suit the customer's needs. Illinois has a statutory duty of care that requires both captive and independent producers to use ordinary care to procure, renew, bind or place any kind of coverage for an insured.

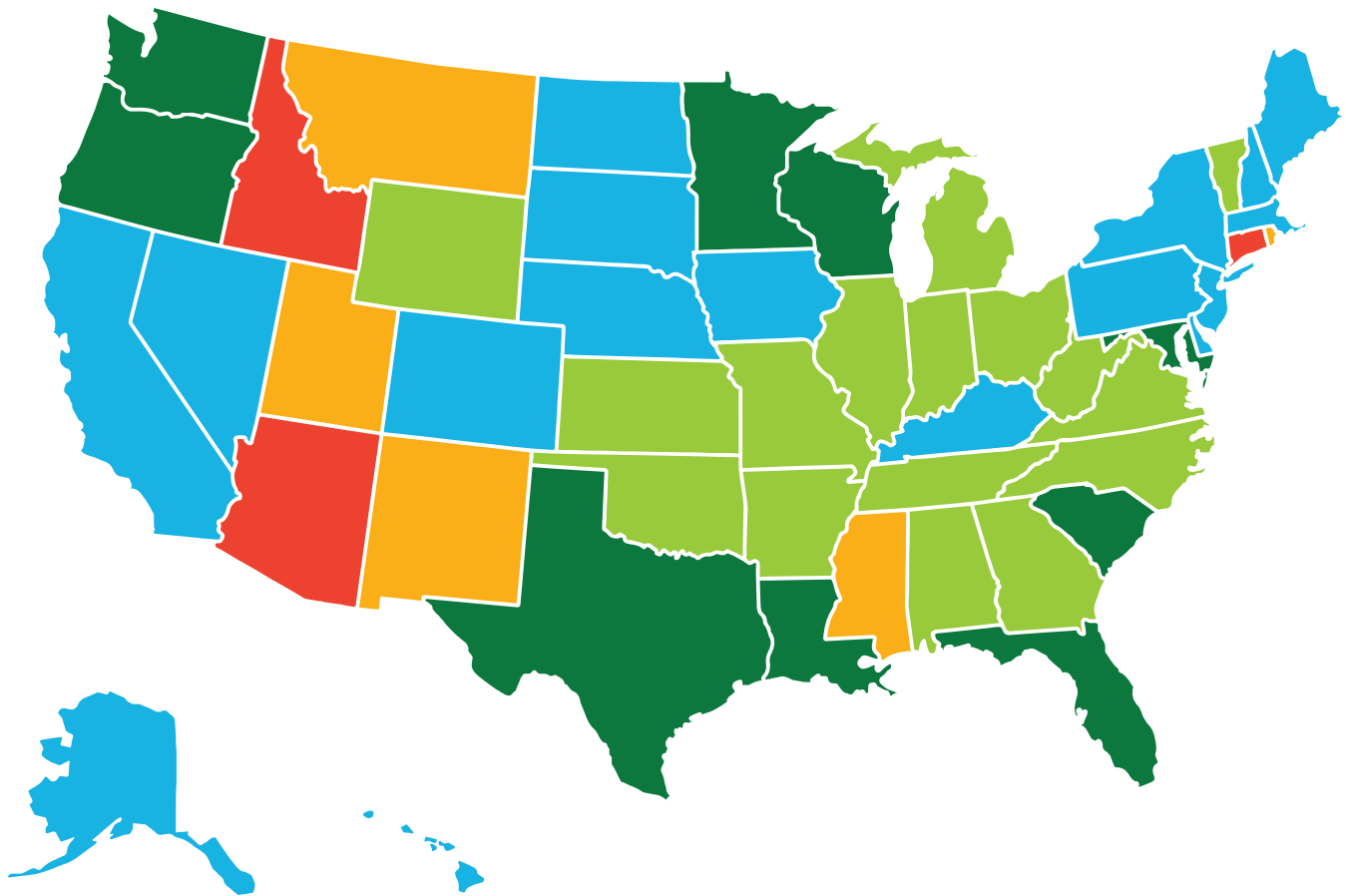
4 Order-Taker States

Some states do not impose an affirmative duty to advise and make no exception for the existence of a "special relationship." Instead, the producer's only obligation in these states is to procure the coverage requested by the customer and timely notify the customer if the insurance cannot be obtained. Even the existence of a fiduciary relationship imposes no additional duty; the producer is still responsible only for procuring the coverage requested by the insured. These order-taker states are Mississippi, Montana, New Mexico, Rhode Island and Utah. However, producers in these states may still be held liable if they provide incorrect or misleading information.

5 Conclusion

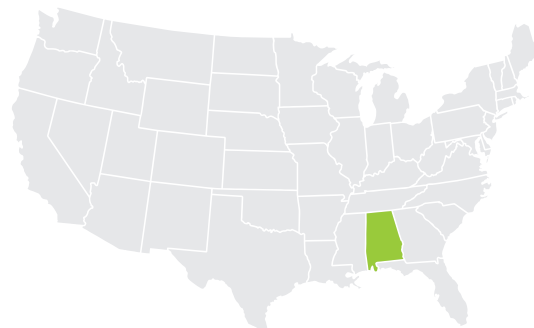
The general trend is toward the imposition of increasingly higher standards of care on insurance producers, guided in many instances by the use of a predicate “special relationship” test before imposing an affirmative duty to advise. But even where the law imposes no affirmative duty to advise, a producer may assume that duty by endeavoring to answer customers’ questions about coverage. Producers should therefore be prepared to offer appropriate advice in response to customers’ expressed needs. Doing so recognizes consumers’ reliance on producers’ expertise in the complex world of insurance and acknowledges that courts in every state often analyze producer-customer relationships with a view toward finding a duty to advise.

For further information, you may contact the authors. Refer to pages 59-60 for details.



Professional Standard of Care	Broad View of Special Relationship	Case-by-Case Determination of Special Relationship	Narrow View of Special Relationship	Order-Taker Status
Arizona Connecticut Idaho	District of Columbia Florida Louisiana Maryland Minnesota Oregon South Carolina Texas Washington Wisconsin	Alaska California Colorado Delaware Hawaii Iowa Kentucky Maine Massachusetts Nebraska Nevada New Hampshire New Jersey New York North Dakota Pennsylvania South Dakota	Alabama Arkansas Georgia Illinois Indiana Kansas Michigan Missouri North Carolina Ohio Oklahoma Tennessee Vermont Virginia West Virginia Wyoming	Mississippi Montana New Mexico Rhode Island Utah

Alabama



No general duty to advise insureds regarding the adequacy of their coverage.

COMMENT

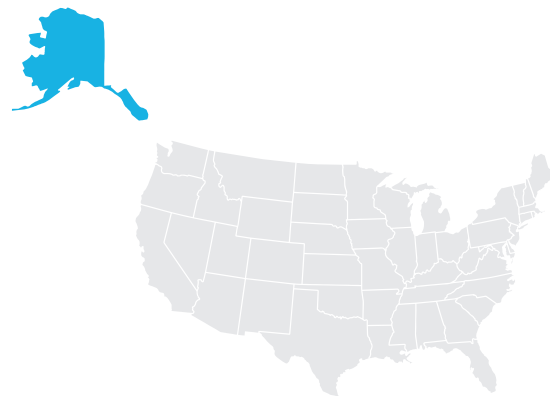
In Alabama, insurance producers have a general duty to use reasonable skill, care and diligence to procure the insurance requested by the client. The producer must seasonably notify the client if he cannot procure the coverage requested. *Timmerman Ins. Agency, Inc. v. Miller*, 229 So. 2d 475, 478 (Ala. 1969).

An insured's failure to read the policy will constitute contributory negligence as a matter of law and will bar any negligent procurement claim by the insured. *See Alfa Life Ins. Corp. v. Colza*, 159 So. 3d 1240, 1255 (Ala. 2014) (“[T]hose courts that have adopted the view that an insured's failure to read insurance documents does not constitute contributory negligence as a matter of law view an insured's duty to read such documents less strictly than do Alabama courts.”).

There is no general duty to advise insureds regarding the adequacy of their coverage. *See Somnus Mattress Corp. v. Hilson*, 280 So. 3d 373, 383 (Ala. 2018) (generally disapproving of requiring producers to advise insureds about the sufficiency of their coverage but recognizing that such a duty can be voluntarily assumed). Although Alabama courts have recognized the special relationship test as applied in other jurisdictions, no Alabama court has yet applied the test in considering whether a producer has a duty to advise. *Id.*

Alaska

No affirmative duty to advise absent a special relationship or special circumstances.



COMMENT

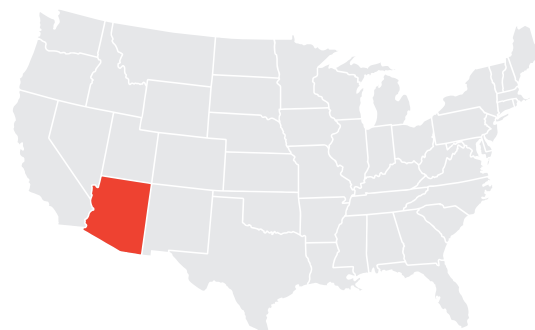
In Alaska, insurance producers have a general duty to use reasonable skill, care and diligence to procure the insurance requested by the client. *Peter v. Schumacher Enters.*, 22 P.3d 481, 485 (Alaska 2001).

“Because the prospective insured typically knows the extent of her personal assets and her ability to pay better than the insurance agent...it is generally the responsibility of the insured to advise the agent of the insurance that she actually wants, including policy limits.” *Id.* at 486. Ordinarily, a producer has no duty to advise a client to obtain different or additional coverage and fulfills her duty to the insured by providing the requested coverage. *Id.*

There is an exception when there is a special relationship between the producer and client, or special circumstances. *Id.* Special circumstances may include a misrepresentation by the producer of the nature of the coverage provided or a voluntary assumption by the producer for selecting the appropriate coverage. *Id.* at 486-87.

Producers may also have a duty to clarify ambiguous coverage requests. *Id.* at 487. For example, if the client asks for “full coverage” and the producer only offers one level of coverage, the producer may be liable for 1) failure to clarify an ambiguous request or 2) negligent recommendation because the offer of one level of coverage is tantamount to a recommendation. *Id.*

Arizona



Professional standard of care may include duty to advise.

COMMENT

In Arizona, insurance producers have a duty to exercise reasonable skill, care and diligence in procuring an appropriate insurance policy for the client. *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 682 P.2d 388, 402 (Ariz. 1984). Whether the producer breached her duty by failing to recommend specific coverage is a question for the trier of fact. *Sw. Auto Painting & Body Repair, Inc. v. Binsfeld*, 904 P.2d 1268, 1269 (Ariz. Ct. App. 1995). Failure to advise may constitute a failure to comply with the standard of care, not a breach of a separate duty. *Webb v. Gittlen*, 174 P.3d 275, 279 (Ariz. 2008).

Although *Binsfeld* appears to require that insurance producers recommend specific coverage to the insured to comply with the standard of care, in 2017, the Arizona Court of Appeals upheld a trial court's finding that a producer had no obligation to undertake an independent risk evaluation, and instead satisfied the standard of care by obtaining coverage that was consistent with or better than that requested by the insured. *BNCCORP, Inc. v. HUB, Int'l, Ltd.*, 400 P.3d 157, 169 (Ariz. Ct. App. 2017).

Regarding uninsured motorist (UM) and underinsured motorist (UIM) insurance, Arizona provides statutory protection for insurance producers who use forms approved by the Arizona Department of Insurance and Financial Institutions to offer those coverages. Under A.R.S. § 20-259.01, an insurance producer's use of such forms "satisfies the insurance producer's standard of care in offering and explaining the nature and applicability" of UM and UIM coverage. The statute also states that the policy's declarations page constitutes the final expression of the named insured's decision to purchase or reject such coverage.

Arkansas

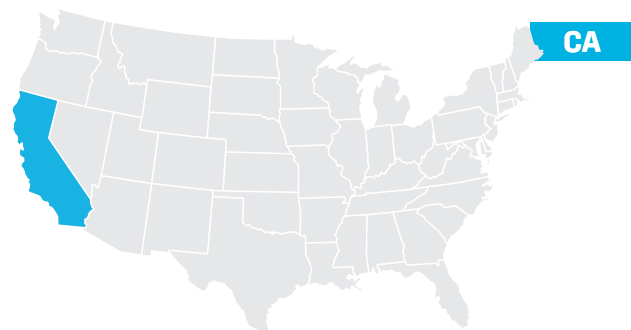
No affirmative duty to advise absent a special relationship.

COMMENT

In Arkansas, there is no affirmative duty to advise the prospective insured absent a special relationship, and insureds have a duty to educate themselves about the contents of their policies. *Scott-Huff Ins. Agency v. Sandusky*, 887 S.W.2d 516, 517 (Ark. 1994); *Stokes v. Harrell*, 711 S.W.2d 755, 756 (Ark. 1986).

A special relationship is evidenced by “an established and ongoing relationship over a period of time, with the agent being actively involved in the client’s business affairs and regularly giving advice and assistance in maintaining proper coverage for the client.” *Buelow v. Madlock*, 206 S.W.3d 890, 893 (Ark. Ct. App. 2005); *see also Farm Credit Midsouth, PCA v. Bollinger*, 548 S.W.3d 164, 176 (Ark. Ct. App. 2018) (noting that “if a special relationship exists between the insured and his insurance agent, this may place on the agent a higher duty to inform the insured”). The existence of a special relationship is a question of fact. *Bollinger*, 548 S.W.3d at 176.

California



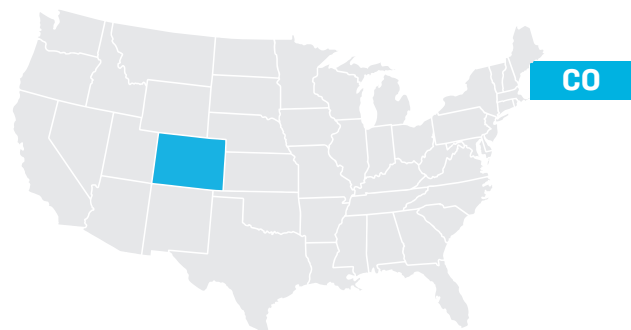
No affirmative duty to advise absent a special relationship.

COMMENT

In California, insurance producers owe a limited duty to their clients “to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured.” *Jones v. Grewe*, 234 Cal. Rptr. 717, 719 (Cal. Ct. App. 1987). Absent a special relationship, insurance producers do not owe an affirmative duty to advise a client about limits or types of coverage. *Id.*

There are three exceptions to the no-duty rule: 1) the producer misrepresents the nature, extent or scope of coverage; 2) there is a request or inquiry by the insured for a particular type or extent of coverage; and 3) the producer assumes a duty to the client by express agreement or by holding himself out as an expert in a particular field of insurance. *Pac. Rim Mech. Contractors, Inc. v. Aon Risk Ins. Servs. W., Inc.*, 138 Cal. Rptr. 3d 294, 297-98 (Cal. Ct. App. 2012).

Colorado



No affirmative duty to advise absent a special relationship.

COMMENT

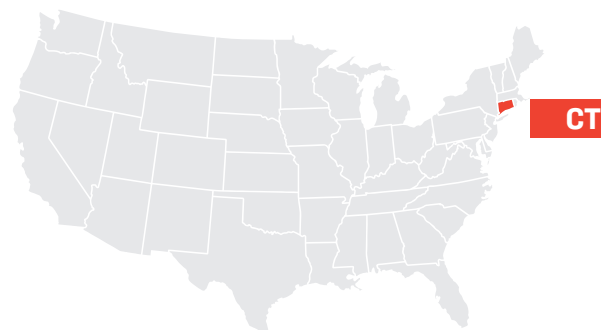
In Colorado, insurance producers have a general duty to act with reasonable care toward their insureds. *Kaercher v. Sater*, 155 P.3d 437, 441 (Colo. App. 2006).

“[W]hen an agent promises to obtain a specific type of insurance requested by the insured, the agent assumes a duty to act reasonably to procure the requested insurance or to notify the insured of the inability or failure to do so.” *Apodaca v. Allstate Ins. Co.*, 232 P.3d 253, 259 (Colo. App. 2009).

Absent a special relationship, insurance producers have no affirmative duty to advise, guide, or direct the client to obtain additional coverage or to warn the client about provisions in the policy. *Kaercher*, 155 P.3d at 441. “Whether a special relationship has been formed turns on whether there is ‘entrustment,’ that is, whether the agent or broker assumes additional responsibilities beyond those which attach to an ordinary, reasonable agent possessing normal competencies and skills.” *Id.*

Connecticut

Producers owe an affirmative duty to advise.

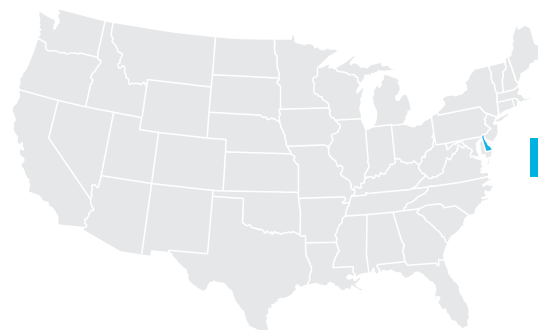


COMMENT

In Connecticut, an insurance producer has a duty “to exercise reasonable skill, care, and diligence in effecting the insurance, and...[w]here [he] undertakes to procure a policy affording protection against a designated risk, the law imposes upon him an obligation to perform with reasonable care the duty he has assumed.” *Precision Mech. Servs., Inc. v. T.J. Pfund Assocs., Inc.*, 952 A.2d 818, 821 (Conn. App. Ct. 2008); *see also Dimeo v. Burns, Brooks & McNeil, Inc.*, 504 A.2d 557, 559 (Conn. App. Ct. 1986) (“An insurance agent has the duty to exercise reasonable skill, care and diligence to see that his client has proper coverage.”).

In *Dimeo*, the Connecticut Appellate Court found “legally correct” the trial court’s jury instructions that “selling insurance is a specialized field with specialized knowledge and experience, and...an agent has the [duty] to advise the client about the kind and extent of desired coverage and to choose the appropriate insurance for the client.” *Id.*; *see also Byrd v. Ortiz*, 44 A.3d 208, 215 (Conn. App. Ct. 2012) (finding the producer had a duty to explain underinsured/uninsured motorist coverage to the insured, explain the consequences of not having a sufficient amount of such coverage, and recommend the proper amount of coverage based on the plaintiff’s individual circumstances); *but see Grossenbacher v. Ericson Agency*, No. CV 970073518S, 2000 WL 487264, at *4 (Conn. Super. Ct. Apr. 10, 2000) (holding insurance producers do not automatically have a duty to advise clients as to adequate coverage absent a special relationship creating a fiduciary duty).

Delaware



DE

No affirmative duty to advise absent an expanded or special relationship.

COMMENT

In Delaware, insurance producers ordinarily have an “obligation to use reasonable care, diligence and judgment in procuring the insurance requested by the insured.” *Sinex v. Wallis*, 611 A.2d 31, 33 (Del. Super. Ct. 1991).

The producer generally assumes no duty to advise the insured on specific insurance matters absent an expanded relationship with the insured. *Id.*; see also *Blanchfield v. State Farm Mut. Auto. Ins. Co.*, 511 A.2d 1044, *2 (Del. 1986) (holding the producer must use reasonable care to procure the coverage he has led the insured to expect but has no general duty to review insured’s risks or recommend coverages.).

An expanded relationship arises when a producer holds herself out as an insurance counselor or specialist and receives additional compensation for giving advice. *Sinex*, 611 A.2d at 33. The insured has a duty to advise the producer about the types and limits of coverage he wants. *Id.* at 34.

However, the insured’s assumption about the producer’s knowledge of his affairs does not create a duty for the producer to act on that information, and an expanded duty of care is not created merely by the length of the insured/producer relationship. *Id.*

Additionally, the general rule that a producer does not have a duty to advise does not apply if the producer voluntarily assumes the responsibility for selecting appropriate coverage or if the insured makes an ambiguous request for coverage that requires clarification. *Slaubaugh Farm, Inc. v. Farm Family Cas. Ins. Co.*, No. CV S16C-06-033 ESB, 2018 WL 5473033 (Del. Super. Ct. Oct. 29, 2018).

District of Columbia

DC

No affirmative duty to advise unless the producer assumes that duty or holds himself out as a consultant and counselor.

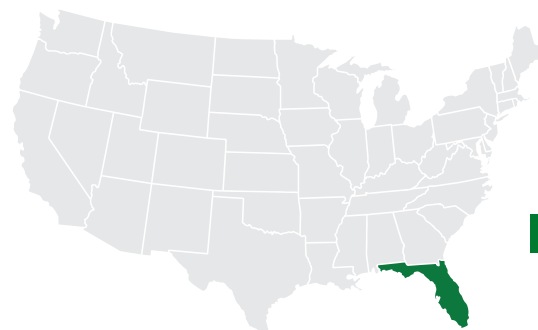
COMMENT

In the District of Columbia, an insurance producer, like any other agent, is required to exercise reasonable care, skill and diligence in the exercise of his employment and if he fails to do so, he may be held responsible for any damage that may result. *Max Holtzman, Inc. v. K & T Co.*, 375 A.2d 510, 514 (D.C. 1977).

Under certain circumstances, the general standard of care may require the producer to advise the insured about the types of available coverages. *Saylab v. Don Juan Rest., Inc.*, 332 F. Supp. 2d 134, 146-47 (D.D.C. 2004) (“[A]n insurance broker in the District of Columbia is held to a higher standard than the average salesman and may be required in some instances to be proactive in assisting a client.”).

If a producer holds himself out as a consultant and counselor, he has a duty to advise the insured as to his insurance needs, especially when such needs are brought to the producer’s attention. *Stevenson v. Severs*, 158 F.3d 1332, 1333-34 (D.C. Cir. 1998).

Florida



Producer has a duty to advise, the scope of which is determined by the producer's undertaking.

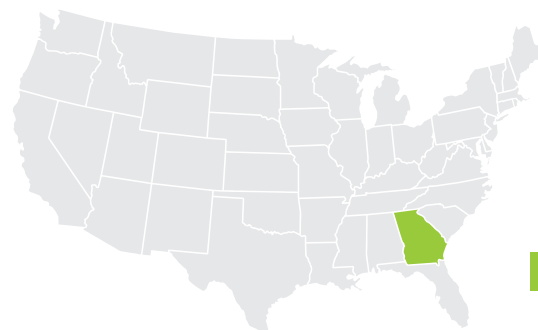
COMMENT

In Florida, insurance producers have a general duty to use reasonable skill and diligence to procure the coverage requested by the client or “clearly warranted by the insured’s expressed needs.” *Adams v. Aetna Cas. & Sur. Co.*, 574 So. 2d 1142, 1155 (Fla. Dist. Ct. App. 1991); *see also Kendall S. Med. Ctr., Inc. v. Consol. Ins. Nation, Inc.*, 219 So. 3d 185, 188 (Fla. Dist. Ct. App. 2017) (stating insurance producers are required to use reasonable skill and diligence in procuring the proper coverage requested by the insured).

This general duty requires the producer to exercise due care in correctly advising the client of the existence and availability of a particular type of insurance or the desirability and availability of higher limits, depending on the scope of the producer’s undertaking. *Adams*, 574 So. 2d at 1155; *see also Warehouse Foods, Inc. v. Corp. Risk Mgmt. Servs., Inc.*, 530 So. 2d 422, 424 (Fla. Dist. Ct. App. 1988) (“When an insured reasonably relies upon an agent’s claimed expertise and advice, liability may be based upon the agent’s negligent failure to properly advise the insured as to coverage.”); *Woodham v. Moore*, 428 So. 2d 280, 280 (Fla. Dist. Ct. App. 1983) (holding the producer may have an obligation to advise clients about availability and benefit of higher limits when producer periodically reviewed insured’s files for eligibility).

Georgia

No affirmative duty to advise absent a special relationship.



COMMENT

In Georgia, insurance producers have a general duty to use reasonable care to procure the insurance requested by the client. *J. Smith Lanier & Co. v. Se. Forge, Inc.*, 630 S.E.2d 404, 406 (Ga. 2006).

Generally, an insurance producer who procures insurance but fails to obtain all of the requested coverage is insulated from liability if the insured does not read the policy. *Cottingham & Butler, Inc. v. Belu*, 774 S.E.2d 747, 750 (Ga. Ct. App. 2015); *see also* *Bush v. AgSouth Farm Credit*, 816 S.E.2d 728, 735 (Ga. Ct. App. 2018) (“[W]here the agent does procure the requested policy and the insured fails to read it to determine which particular risks are covered and which are excluded, the agent is thereby insulated from liability, even though he may have undertaken to obtain full coverage.”).

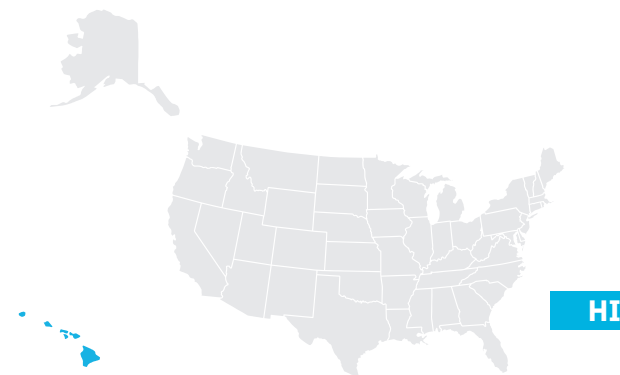
However, the insured is relieved of the duty to read the policy if the producer holds herself out as an expert and the insured relies on the producer’s expertise to identify insurance needs and procure the “correct” amount and type of coverage. *MacIntyre & Edwards, Inc. v. Rich*, 599 S.E.2d 15, 18 (Ga. Ct. App. 2004).

An insured is also relieved of his duty to read the policy when the evidence reflects a special relationship of trust or other unusual circumstances that would have prevented or excused the insured from his duty to ensure that no ambiguity existed between the requested insurance and that which was issued. *Heard v. Sexton*, 532 S.E.2d 156, 158 (Ga. Ct. App. 2000).

However, if the insured’s reasonable review of the policy would have revealed that the requested coverage wasn’t issued, the insured’s failure to review the policy will excuse the producer’s failure to procure the requested coverage, even if the insured relied on the producer’s expertise. *Id.*

Hawaii

No affirmative duty to advise absent a special relationship.

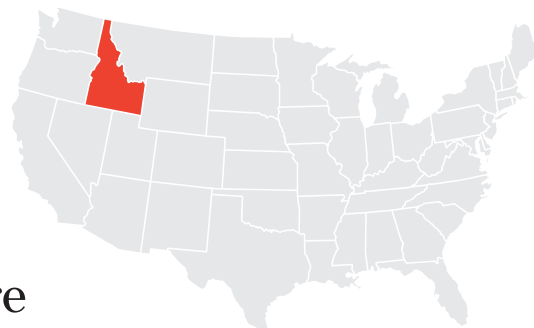


COMMENT

In Hawaii, insurance producers have a general duty to exercise reasonable skill, care and diligence in carrying out their duties in procuring insurance for the insured client. *Quality Furniture, Inc. v. Hay*, 595 P.2d 1066, 1068 (Haw. 1979).

Although an insurance producer owes a duty to the insured, the extent of the producer's responsibilities in rendering help and providing advice to the insured turns on the facts of the case, including the relationship and prior dealings between the parties. *Macabio v. TIG Ins. Co.*, 955 P.2d 100, 112 (Haw. 1998); *see, e.g., Quality Furniture*, 595 P.2d at 1069 (holding the fact the producer had only worked with the insured for a few months was an appropriate factor to consider in determining that the producer wasn't negligent in not procuring fire insurance).

Idaho



ID

Compliance with the standard of care requires the producer to advise the insured about types and limits of coverage.

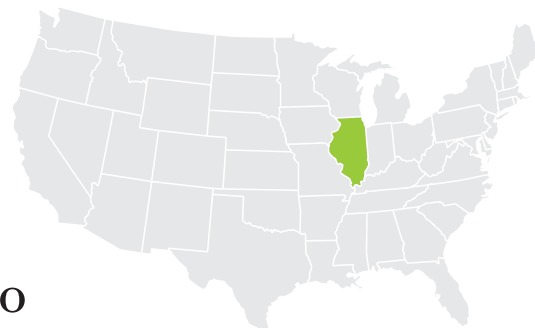
COMMENT

In Idaho, a person in the business of selling insurance holds herself out to the public as experienced and knowledgeable in a complicated and specialized field. *McAlvain v. Gen. Ins. Co. of Am.*, 554 P.2d 955, 958 (Idaho 1976).

“An insurance agent performs a personal service for his client, in advising him about the kinds and extent of desired coverage and in choosing the appropriate insurance contract for the insured.” *Id.* And the insured naturally relies on that expertise when purchasing insurance. *Id.*

Therefore, insurance producers are held liable for their negligence, just like other professionals such as doctors, attorneys, architects and engineers. *Id.* “[A]n insurance agency which is requested to provide complete coverage and knows or should know the amount of insurance necessary to effect complete coverage, but thereafter [underinsures] its insured, can be held liable in tort for its negligence.” *Id.*

Illinois



Statutory duty to use ordinary care to procure the coverage requested. No duty to advise absent the insured's inquiry.

IL

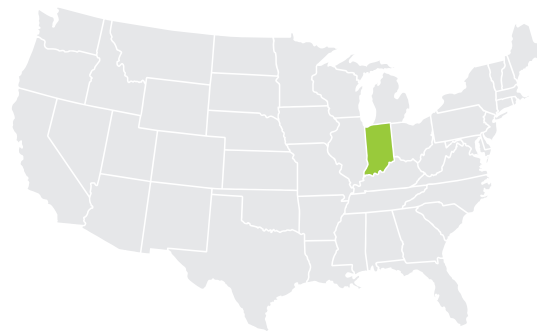
COMMENT

In Illinois, insurance producers have a statutory duty under 735 ILL. COMP. STAT. ANN. § 5/2-2201 (West 2020) to use ordinary skill and care to procure, renew, bind, or place the coverage requested by an insured. Under the statute, an insurance producer is not subject to fiduciary liability except in instances of financial misfeasance. *Melrose Park Sundries, Inc. v. Carlini*, 927 N.E.2d 132, 135-36 (Ill. App. Ct. 2010); *Skaperdas v. Country Cas. Ins. Co.*, 28 N.E.3d 747, 754 (Ill. 2015).

A producer has no duty to obtain additional insurance that was not requested by the insured and is not obligated to offer advice regarding the need for the insurance unless the insured inquired about or requested the coverage. *Carlini*, 927 N.E.2d at 136.

It is the insured's responsibility to inform his producer of his insurance needs, so the producer can "faithfully negotiate and procure an insurance policy according to the wishes and requirements of the client." *Garrick v. Mesirow Fin. Holdings, Inc.*, 994 N.E.2d 986, 991 (Ill. App. Ct. 2013).

Indiana



No affirmative duty to advise absent a special relationship.

IN

COMMENT

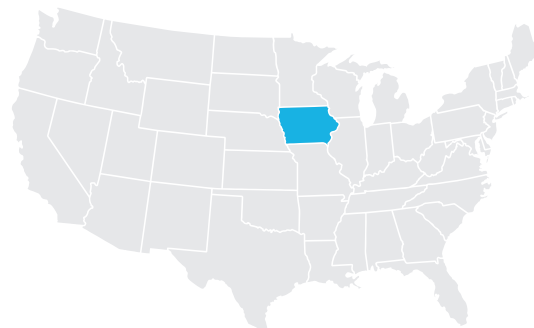
In Indiana, insurance producers who undertake to procure coverage owe their clients a general duty of reasonable care and skill in obtaining insurance and following their clients' instructions. *Indiana Restorative Dentistry, P.C. v. Laven Ins. Agency, Inc.*, 27 N.E.3d 260, 264 (Ind. 2015).

A producer's duty to procure is distinct from the duty to advise clients about the adequacy of coverage or any alternative coverage. *Id.* "Agents have no duty to advise unless the agent and the insured have a 'special relationship' of trust and intimacy." *Id.*

Factors for finding a special relationship include the producer exercising broad discretion on the insured's behalf, counseling the insured concerning specialized insurance coverage, holding himself out as an expert coupled with the client's detrimental reliance on the expertise, or receiving additional compensation for the advice. *Am. Family Mut. Ins. Co. v. Dye*, 634 N.E.2d 844, 848 (Ind. Ct. App. 1994); *Cox v. Mayerstein-Burnell Co., Inc.*, 19 N.E.3d 799, 805 (Ind. Ct. App. 2014).

"Whether an insurance agent owes the insured a duty to advise is...a question of law for the court. However, whether the parties' relationship gives rise to such a duty may involve factual questions." *Dye*, 634 N.E.2d at 848.

Iowa



No affirmative duty to advise absent a special relationship.

10

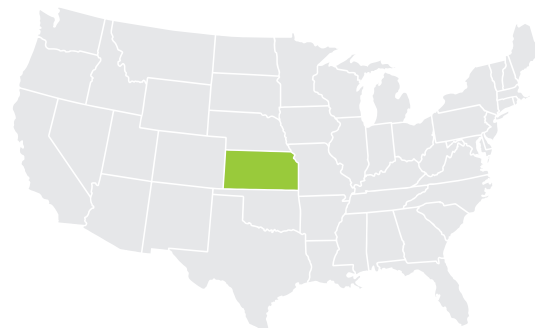
COMMENT

Generally, in Iowa, a producer owes the insured a duty to “exercise reasonable care, diligence, and judgment” in procuring the insurance requested by the insured. *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457, 464 (Iowa 1984).

Producers owe no additional duty absent a special relationship between the producer and the insured. *Id.*

Special circumstances must be something more than the usual insurance producer/insured relationship. *Id.* They include a producer holding himself out as an insurance specialist or consultant and receiving additional compensation for insurance counseling. *Id.* The holding in *Sandbulte* has since been codified as the standard for insurance producers at Iowa Code § 522B.11(7)(a) (West 2020).

Kansas



No affirmative duty to advise absent a contractual relationship or specific request.

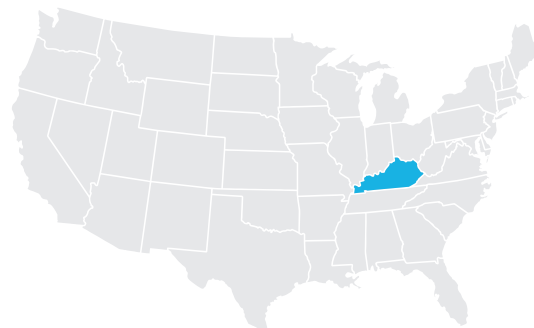
COMMENT

KS

In Kansas, an insurance producer who undertakes to procure insurance owes his client a duty to exercise the skill, care and diligence that would be exercised by a reasonably prudent and competent insurance producer acting under the same circumstances. *Casas v. Farmers Ins. Exch.*, 130 P.3d 1201, 1207 (Kan. Ct. App. 2005). But once the producer procures the requested coverage, he has no continuing duty to “advise, guide or direct” the client absent a specific agreement to do so. *Marshall v. Donnelly*, 783 P.2d 1321, 1322 (Kan. Ct. App. 1989).

Without evidence of an agency agreement or other contractual relationship, or a specific request for advice, the producer has no duty to procure “adequate” coverage, especially when the insured has requested specific coverage limits. *Bichelmeyer Meats v. Atl. Ins. Co.*, 42 P.3d 1191, 1196 (Kan. Ct. App. 2001).

Kentucky



No affirmative duty to advise absent special circumstances.

COMMENT

KY

In Kentucky, an insurance producer ordinarily only assumes those duties found in an agency relationship and owes the insured the obligation to deal in good faith and to carry out the insured's instructions. *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 248 (Ky. 1992).

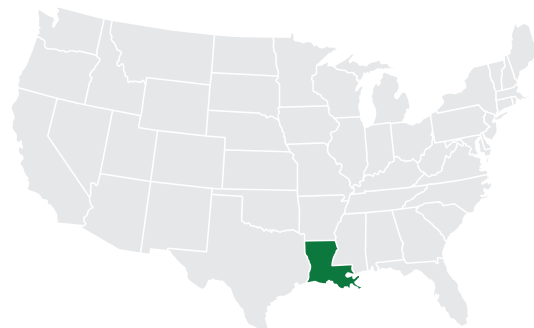
There is no affirmative duty to advise unless the producer expressly or impliedly agrees to provide advice. *Id.*

An implied agreement may arise if the producer receives additional compensation for the advice, the insured clearly requests advice, or there is a course of dealing which puts the producer on notice that the client seeks and relies upon his advice. *Id.*; see also *Allstate Ins. Co. v. Smith*, 487 S.W.3d 857, 863 (Ky. 2016) (finding a lengthy relationship alone is insufficient to create an affirmative duty to advise).

A request for "full coverage" or the "best" policy does not create an implied duty to advise. *Mullins*, 839 S.W.2d at 249. But if the producer holds himself out as an expert or counselor, through advertising or other means, the scope of his duty will be commensurate. *Id.*

Louisiana

No affirmative duty to advise absent a special relationship.



COMMENT

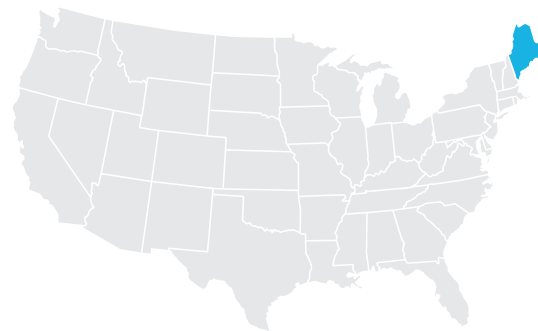
In Louisiana, an insurance producer who undertakes to procure insurance for the client owes an obligation to the client to use reasonable diligence in attempting to procure the requested coverage and to promptly notify the client if he fails to obtain the requested insurance. *Karam v. St. Paul Fire & Marine Ins. Co.*, 281 So. 2d 728, 730 (La. 1973).

There is no affirmative duty to advise whether the client has procured the correct amount or type of insurance coverage. *Isidore Newman Sch. v. J. Everett Eaves, Inc.*, 42 So. 3d 352, 353 (La. 2010). “It is the insured’s responsibility to request the type of insurance coverage, and the amount of coverage needed. It is not the agent’s obligation to spontaneously or affirmatively identify the scope or the amount of insurance coverage the client needs.” *Id.* at 359; *see also Heidingsfelder v. Hibernia Ins., LLC*, 25 So. 3d 976, 978 (La. Ct. App. 2009) (“[I]nsurance agents do not have an independent duty to identify their clients’ needs and to advise them regarding whether they may be underinsured.”); *Dupont Bldg., Inc. v. Wright & Percy Ins.*, 88 So.3d 1263, 1267 (La. Ct. App. 2012) (stating it’s the insured’s responsibility to request the amount and type of coverage needed and to read the policy once it’s issued).

However, an insurance producer’s duty to his client may be extended depending on how the producer holds herself out or the existence of a special relationship and agreements between the producer and client. *Graves v. State Farm Mut. Auto. Ins. Co.*, 821 So. 2d 769, 773 (La. Ct. App. 2002); *Breck Constr. Co. v. Thomas, Farr & Reeves Agency, Inc.*, 852 So.2d 1151, 1155 (La. Ct. App. 2003).

LA

Maine



No affirmative duty to advise absent a special relationship.

COMMENT

In Maine, insurance producers owe a general duty to use reasonable care, diligence and judgment in obtaining the insurance coverage requested by the insured. *Szelenyi v. Morse, Payson & Noyes Ins.*, 594 A.2d 1092, 1094 (Me. 1991).

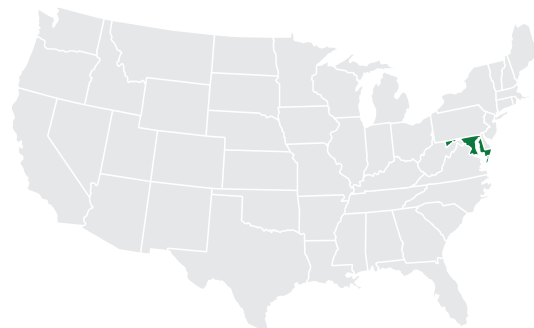
There is no duty to advise about the adequacy of coverage absent a special relationship between producer and client. *Id.* A special relationship can be established by the producer and client's course of dealings, such as the producer agreeing to procure additional insurance or volunteering information upon which the client relied. *Id.*

Captive producers in Maine owe no duty of care to customers absent fraud, misrepresentation or a separate agreement creating an agency relationship. *Ghiz v. Richard S. Bradford, Inc.*, 573 A.2d 379, 380 (Me. 1990).

ME

Maryland

No affirmative duty to advise absent a special relationship.



COMMENT

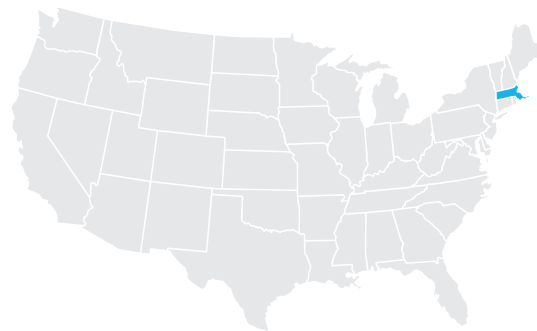
In Maryland, insurance producers must exercise reasonable care and skill in performing their duties. *Popham v. State Farm Mut. Ins. Co.*, 634 A.2d 28, 36 (Md. 1993). Producers owe their clients “a professional’s duty,” but have no duty to advise clients about the adequacy of coverage absent a special relationship. *Cooper v. Berkshire Life Ins. Co.*, 810 A.2d 1045, 1069-70 (Md. Ct. Spec. App. 2002).

A special relationship between a producer and client is potentially created if “an insurance agent or broker holds himself or herself out as a highly skilled insurance expert, and the insured relies to his detriment on that expertise. A special relationship may also be demonstrated by a long-term relationship of confidence, in which the agent or broker assumes the duty to render advice, or has been asked by the insured to provide advice, and the adviser is compensated accordingly, above and beyond the premiums customarily earned.” *Sadler v. Loomis Co.*, 776 A.2d 25, 35 (Md. Ct. Spec. App. 2001).

By statute, Maryland separately licenses insurance advisers—people who examine policies and advise policyholders for a fee. MD. CODE ANN. Ins. §§ 10-201 to -215 (West 2020).

MD

Massachusetts



No affirmative duty to advise absent a special relationship.

COMMENT

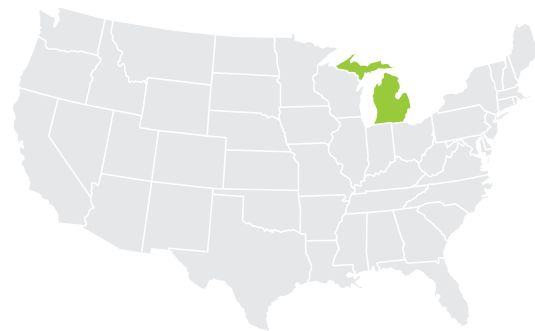
In Massachusetts, absent special circumstances, an insurance producer does not have a duty “to ensure that the insurance policies procured by him provide coverage that is adequate for the needs of the insured.” *Martinonis v. Utica Nat’l Ins. Grp.*, 840 N.E.2d 994, 996 (Mass. App. Ct. 2006).

Special circumstances include 1) a prolonged business relationship, 2) the complexity and comprehensiveness of the client’s coverages, 3) the frequency of contact between the client and producer to attend to the client’s insurance needs, and 4) the extent to which the client relies on the advice of the producer by reason of the complexity of the policies. *Perreault v. AIS Affinity Ins. Agency of New England, Inc.*, 107 N.E.3d 1222, 1227 (Mass. App. Ct. 2018).

The insured must specifically allege assertions by the producer and the insured’s subsequent reliance to establish the special relationship. *AGA Fishing Grp. Ltd. v. Brown & Brown, Inc.*, 533 F.3d 20, 24 (1st Cir. 2008).

MA

Michigan



No affirmative duty to advise absent a special relationship.

COMMENT

In Michigan, an insurance producer owes a duty to procure the insurance coverage requested by the insured. *Zaremba Equip., Inc. v. Harco Nat'l Ins. Co. (Zaremba I)*, 761 N.W.2d 151, 164 (Mich. Ct. App. 2008).

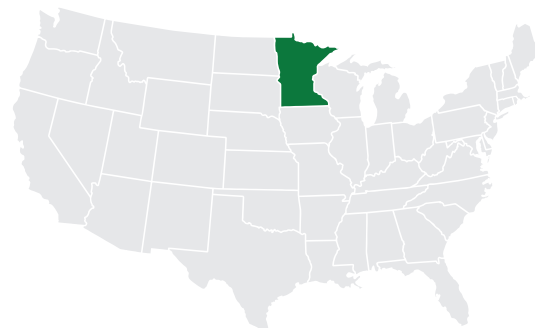
Insurance producers are order takers and have no duty to advise the insured regarding the adequacy of insurance coverage absent a special relationship between the producer and client or special circumstances. *Harts v. Farmers Ins. Exch.*, 597 N.W.2d 47, 51 (Mich. 1999); *see also Zaremba Equip., Inc. v. Harco Nat'l Ins. Co. (Zaremba II)*, 837 N.W.2d 686, 694 (Mich. Ct. App. 2013) (“Insurance agents, who function ‘essentially’ as ‘order takers,’ should be distinguished from insurance counselors, who function as advisors.”); *cf. Genesee Food Servs., Inc. v. Meadowbrook, Inc.*, 760 N.W.2d 259, 262 (Mich. Ct. App. 2008) (distinguishing captive from independent producers and holding that independent insurance producers have a fiduciary duty of loyalty to the insureds and must provide them with the most comprehensive coverage and ensure that the insurance contract properly addresses their needs); *Chem. Tech., Inc. v. Berkshire Agency, Inc.*, No. 326394, 2016 WL 4008455, at *4 (Mich. Ct. App. July 26, 2016) (finding *Harts* did not limit the no duty to advise rule to only captive producers and the rule thus applies to both captive and independent insurance producers).

Special circumstances include: 1) the producer misrepresenting the nature or extent of coverage; 2) the insured making an ambiguous request requiring clarification (“I want full coverage”); 3) the producer volunteering (inaccurate) advice; and 4) the producer assuming a duty by agreement or promise to the insured. *Harts*, 597 N.W.2d at 52.

Insured’s failure to read his policy may amount to contributory negligence but will not necessarily preclude suit against the producer. *Zaremba II*, 837 N.W.2d at 693.

State statute requires producers to be licensed insurance counselors to provide advice and opinions on benefits promised, coverage afforded, terms, value, effect, advantages and disadvantages of a policy. MICH. COMP. LAWS ANN. § 500.1232 (West 2020). Not having this license does not prohibit producers from offering “customary advice.” *Id.*

MI



Minnesota

No affirmative duty to advise absent a special relationship.

COMMENT

In Minnesota, insurance producers have a duty to exercise the skill and care that a reasonably prudent person engaged in the insurance business would use under similar circumstances. *Gabrielson v. Warnemunde*, 443 N.W.2d 540, 543 (Minn. 1989). This duty is ordinarily limited to following the insured's instructions and acting in good faith. *Id.*

If a special relationship exists, the producer may have a duty to offer additional coverage or to inquire about potential gaps in coverage and advise the client on how to fill them. *Id.* at 543-44. Special circumstances exist when there is a long-term relationship, when the producer knows or should know that the insured is relying on the producer's judgment, or when the insured asks the producer to examine the insured's exposure and advise the insured. *Scottsdale Ins. Co v. Transp. Leasing/Contract, Inc.*, 671 N.W.2d 186, 196 (Minn. Ct. App. 2003).

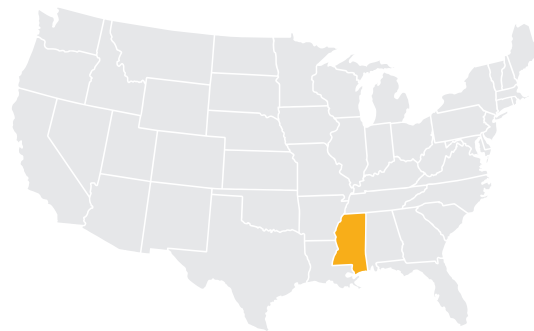
A producer's knowledge of the insured's need for a specific coverage could also create an affirmative duty for the producer to advise the insured. *Osendorf v. Am. Family Ins. Co.*, 318 N.W.2d 237, 238 (Minn. 1982).

A standard of care requiring insurance producers to affirmatively advise beyond coverage specifically requested may be established by expert testimony. *Atwater Creamery Co. v. W. Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 279 (Minn. 1985).

MN

Mississippi

No affirmative duty to advise.



COMMENT

“In Mississippi, the purchase of insurance is deemed to be an arms’ length transaction.” *Langston v. Bigelow*, 820 So.2d 752, 756 (Miss. Ct. App. 2002) (noting the purchase of insurance does not give rise to any special relationship).

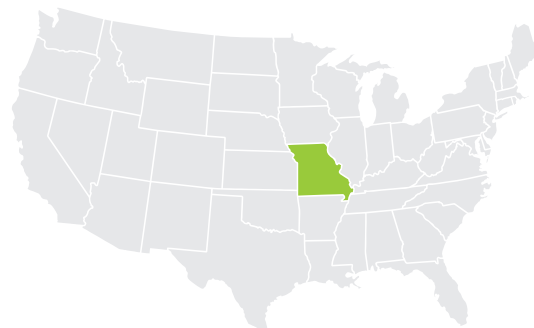
Insurance producers must use the degree of diligence and care that a reasonably prudent person would exercise. *Mladineo v. Schmidt*, 52 So.3d 1154, 1162 (Miss. 2010); see also *Worldwide Mach. Sales, Inc. v. Ill. Cent. R.R.*, 26 F. Supp. 2d 900, 903 (S.D. Miss. 1998) (noting insurance producers have a general duty to exercise good faith and reasonable diligence to procure coverage on the best terms they can obtain and must faithfully carry out the instructions given him by the insured).

Insurance producers do not have an affirmative duty to advise insureds regarding their coverage needs, but if they do offer advice to insureds, they have a duty to exercise reasonable care in doing so. *Mladineo*, 52 So.3d at 1163.

An insured is charged with the knowledge of the terms of the policy regardless of whether the insured read the policy. *Id.* at 1162-63.

MS

Missouri



No affirmative duty to advise absent a special relationship and additional compensation beyond usual commission.

COMMENT

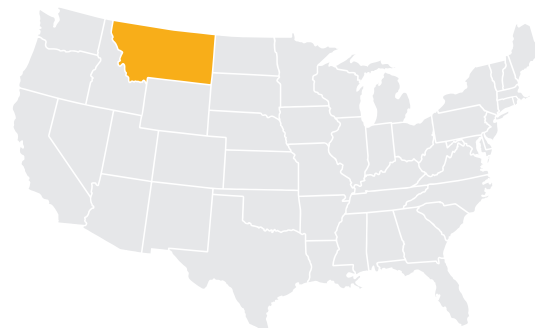
In Missouri, insurance producers who undertake to procure insurance for another for compensation owe a duty of reasonable skill, care, and diligence in obtaining the requested coverage. *Busey Truck Equip., Inc. v. Am. Family Mut. Ins. Co.*, 299 S.W.3d 735, 739 (Mo. Ct. App. 2009).

There is no affirmative duty to advise clients about additional coverage or higher limits absent an agreement to provide such advice. *Emerson Elec. Co. v. Marsh & McLennan Cos.*, 362 S.W.3d 7, 13 (Mo. 2012); *Gateway Hotel Holdings, Inc. v. Chapman-Sander, Inc.*, 474 S.W.3d 579, 585 (Mo. Ct. App. 2013). Such an agreement is generally coupled with additional compensation paid to the producer, beyond his usual commission. *Manzella v. Gilbert-Magill Co.*, 965 S.W.2d 221, 228 (Mo. Ct. App. 1998).

A long-term relationship with the producer, even combined with a request for “sufficient” coverage, is not enough to create a special relationship absent additional compensation or the producer holding himself out as an insurance expert. *Id.*

The insured’s failure to read his policy may be contributory negligence but is not fatal to his claim for failure to procure. *Gateway Hotel Holdings, Inc.*, 474 S.W.3d at 587.

MO



Montana

No affirmative duty to advise.

COMMENT

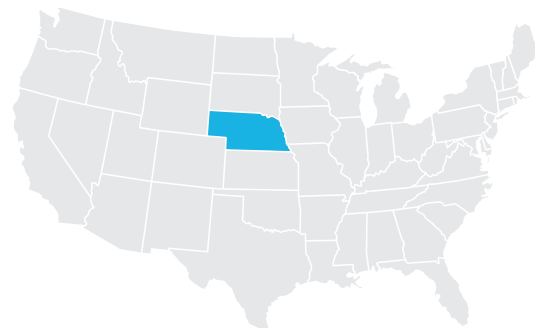
In Montana, an insurance agent has “an absolute duty to obtain the insurance coverage which an insured directs the agent to procure.” *Bailey v. State Farm Mut. Auto. Ins. Co.*, 300 P.3d 1149, 1153 (Mont. 2013).

An insurance producer has no duty to advise the client about types or limits of coverage. *Monroe v. Cogswell Agency*, 234 P.3d 79, 86 (Mont. 2010). But if the producer does provide advice, she must do so in a non-negligent manner because the insured is entitled to rely on the producer’s representations about coverage unless the circumstances dictate otherwise. *Fillinger v. Northwestern Agency* 938 P.2d 1347, 1352 (Mont. 1997); *cf. Dulaney v. State Farm Fire & Cas. Ins. Co.*, 324 P.3d 1211, 1214-15 (Mont. 2014) (holding the insured was required to produce expert testimony on the nature and extent of a producer’s duties when the insured alleged that her producer would have advised her to purchase higher coverage limits if he had assessed her business property and inventory).

The insured’s failure to read the policy may amount to contributory negligence but will not bar a claim for failure to procure. *Bailey*, 300 P.3d at 1154.

MT

Nebraska



No affirmative duty to advise absent special circumstances.

COMMENT

In Nebraska, an insurance producer has no duty to anticipate what coverage an insured should have. *Hansmeier v. Hansmeier*, 912 N.W.2d 268, 275-76 (Neb. Ct. App. 2018). Rather, when an insured asks an insurance producer to procure insurance, the insured has a duty to advise the producer as to the desired insurance. *Id.*

A producer may have a duty to explain policy terms to the insured in certain circumstances. *Dahlke v. John F. Zimmer Ins. Agency*, 515 N.W.2d 767, 771 (Neb. 1994). For example, if the producer becomes aware of a change in coverage, he may have a duty to explain the change to the insured. *Id.* at 771-72.

However, if an insurance policy provision is clear and unambiguous, the insured's failure to read it will absolve the producer from his failure to explain the provision. *Id.* at 772.

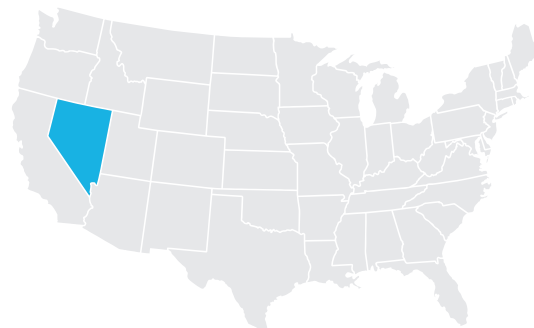
A producer may assume a duty to provide advice about specific insurance coverage if the producer agreed to provide advice or the insured was reasonably led by the producer to believe he would receive advice. *Hansmeier*, 912 N.W. 2d at 276.

A producer may also assume a duty to ensure a coverage limit is adequate if he chooses the limit without insured's input. *Custom Auto Body Co. v. Prososki*, No. A-96-1034, 1999 WL 14492, at *10 (Neb. Ct. App. Jan. 12, 1999).

If the producer undertakes to advise an insured, he must use reasonable care to provide accurate information. *Flamme v. Wolf Ins. Agency*, 476 N.W.2d 802, 806 (Neb. 1991).

NE

Nevada



No affirmative duty to advise absent special circumstances.

COMMENT

In Nevada, an insurance producer has a duty “to use reasonable diligence to place the insurance and reasonably to notify the client if he is unable to do so.” *O.P.H. of Las Vegas, Inc. v. Or. Mut. Ins. Co.*, 401 P.3d 218, 223 (Nev. 2017).

An insurance producer does not owe the insured any additional duties other than procuring the requested coverage. *Flaherty v. Kelly*, 129 Nev. 1114 (2013).

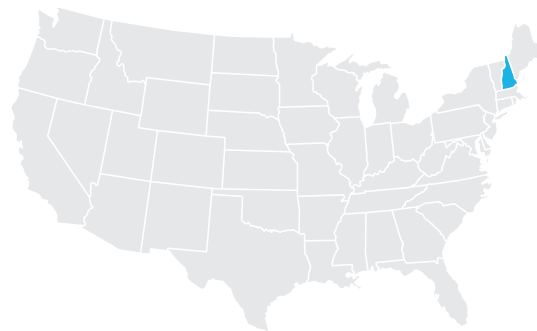
However, a producer may assume additional duties to its insured in special circumstances. *O.P.H.*, 401. P.3d at 223; *see also Flaherty*, 129 Nev. 1114 (stating an insurance producer’s representations or the existence of a special relationship between the producer and the insured may create additional duties toward the insured).

The insured has a duty to read his insurance policy. *Farmers Ins. Exch. v. Young*, 832 P.2d 376, 379 (Nev. 1992). Failure to do so may amount to contributory negligence or bar recovery against the producer. *See First Fin. Ins. Co. v. Scotch 80’s Ltd., Inc.*, No. 2:08-CV-00862-RLH-LRL, 2010 WL 4005423, at *2 (D. Nev. Oct. 12, 2010).

Insurance consultants are separately licensed and provide, for a fee, information that best serves the client’s insurance needs and interests, “to the best of the consultant’s knowledge, understanding and opinion.” NEV. REV. STAT. ANN. § 683C.100 (West 2020).

NV

New Hampshire



No affirmative duty to advise absent a special relationship.

COMMENT

In New Hampshire, an insurance producer owes customers a general duty to use reasonable care and diligence to procure requested insurance but has no affirmative or continuing duty to advise them regarding the availability or sufficiency of their insurance coverage absent special circumstances. *Sintros v. Hamon*, 810 A.2d 553, 555 (N.H. 2002).

Whether a special relationship exists depends on the particular relationship between the parties, but it must be something more than the standard producer-insured relationship. *Id.* at 556. Special circumstances may include (1) the producer's express agreement to advise, (2) additional compensation apart from premium payments, (3) the producer holding herself out as an expert, or (4) reliance on the producer's answer to a specific coverage question. *Id.*

A customer's request for "full coverage" or "the best policy" does not automatically impose a duty on the producer to inform or advise the customer about coverage or to use his expertise and discretion to determine what coverage the customer should purchase. *DeWyngaerdt v. Bean Ins. Agency*, 855 A.2d 1267, 1270 (N.H. 2004). Such a request is generally too broad and vague to constitute a specific request for a particular coverage, even when the producer has knowledge about the customer's operations. *Id.*

NH

New Jersey



No affirmative or continuing duty to advise absent special circumstances or awareness of a particular peril.

COMMENT

In New Jersey, insurance producers have a duty to exercise diligence in obtaining coverage in the area the insured seeks to be protected. *Satec, Inc. v. Hanover Ins. Grp., Inc.*, 162 A.3d 311, 317 (N.J. Super. Ct. App. Div. 2017). Specifically, the producer is required “(1) to procure the insurance; (2) to secure a policy that is neither void nor materially deficient; and (3) to provide the coverage he or she undertook to supply.” *Id.*; see also *Aden v. Fortsh*, 776 A.2d 792, 800 (N.J. 2001) (stating an insurance producer acts in a fiduciary capacity when conducting her business and has a duty to exercise good faith and reasonable skill in advising insureds).

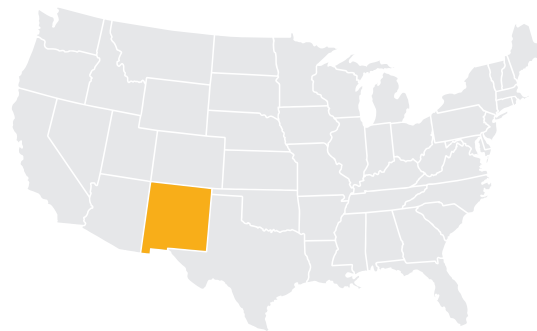
A producer has a duty to advise the insured about the need for higher limits when there is a special relationship between the producer and insured, either in the form of an inquiry or request by the insured or a specific representation by the producer. *Chen Lin Wang v. Allstate Ins. Co.*, 592 A.2d 527, 533, 535 (N.J. 1991).

A producer also has a duty to advise insureds of their coverage needs when the producer is aware of a particular peril. *Sears Mortg. Corp. v. Rose*, 634 A.2d 74, 85 (N.J. 1993).

There is no comparative negligence for a customer’s failure to read the insurance policy; however, if the customer’s conduct substantially contributed to the producer’s non-performance of his duties, then comparative fault may apply. *Aden*, 776 A.2d at 799, 802.

NJ

New Mexico



No affirmative duty to advise about types or limits of coverage.

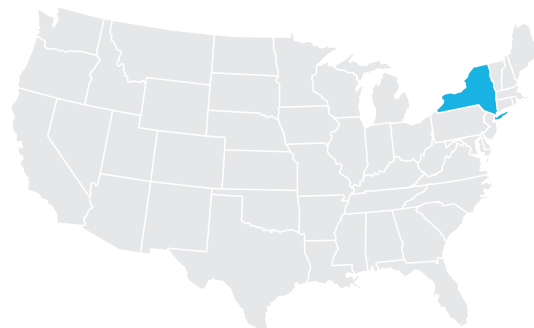
COMMENT

In New Mexico, an insurance producer who undertakes to procure coverage for another, and through his fault or neglect fails to do so, may be held liable for breach of contract to procure insurance or breach of the duty to exercise reasonable skill, care and diligence to procure the coverage requested. *Jernigan v. New Amsterdam Cas. Co.*, 367 P.2d 519, 525 (N.M. 1961); *Sanchez v. Martinez*, 653 P.2d 897, 900-01 (N.M. Ct. App. 1982).

Because contract (policy) interpretation is not generally within the scope of the producer's authority, he may have no duty to advise the client concerning policy terms and conditions, such as the refund of premiums. *Thompson v. Occidental Life Ins. Co. of Cal.*, 567 P.2d 62, 64 (N.M. Ct. App. 1977). Regardless, the producer must provide clear, accurate information to the insured because the producer's representations about the policy may create a reasonable expectation of coverage that differs from the actual policy terms. See *Bird v. State Farm Mut. Auto. Ins. Co.*, 165 P.3d 343, 350 (N.M. Ct. App. 2007) (expectation of coverage based, in part, on insured's "trust relationship" with producer who serviced insured's account for 26 years).

NM

New York



No affirmative or continuing duty to advise absent a special relationship.

COMMENT

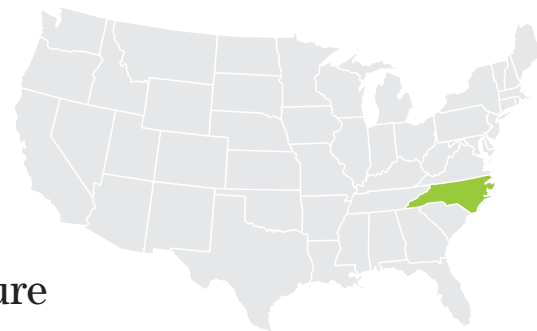
In New York, an insurance producer has a common-law duty to obtain requested coverage for a client within a reasonable amount of time, or to inform the client of his inability to do so. *Verbert v. Garcia*, 63 A.D.3d 1149, 1150, (N.Y. App. Div. 2009). “[T]he duty is defined by the nature of the client’s request.” *Id.*

Absent a specific request for coverage or the existence of a special relationship with the client, a producer has no continuing duty to advise, guide, or direct a client to obtain additional coverage. *Id.*; *Am. Bldg. Supply Corp. v. Petrocelli Grp., Inc.*, 979 N.E.2d 1181, 1184 (N.Y. 2012). The existence of a special relationship is determined on a case-by-case basis on factors such as (1) the producer receiving compensation apart from the payment of premiums, (2) an interaction with the customer regarding a question of coverage that made it apparent the customer was relying on the advice of the producer, and (3) a course of dealing over an extended period of time between the producer and customer that would have put an objectively reasonable producer on notice that her advice was being sought and relied on. *Voss v. Netherlands Ins. Co.*, 8 N.E.3d 823, 828 (N.Y. 2014); *Cromer v. Rosenzweig Ins. Agency Inc.*, 156 A.D.3d 1192, 1195 (N.Y. App. Div. 2017).

An insured’s failure to read the policy may provide evidence for the defense of comparative negligence but does not automatically bar a claim against a producer. *Am. Bldg. Supply*, 979 N.E.2d at 1185.

NY

North Carolina



Fiduciary duty to advise insured of the nature and extent of coverage on policy procured. Otherwise, no affirmative duty to advise absent special circumstances.

COMMENT

In North Carolina, when an insurance producer undertakes to procure insurance for a customer to afford protection against a designated risk, the law imposes upon the producer the duty to exercise reasonable skill, care and diligence in procuring the coverage, and the producer will be liable for loss attributable to the negligent performance or default of that duty. *Cobb v. Penn. Life Ins. Co.*, 715 S.E.2d 541, 548 (N.C. Ct. App. 2011).

The producer has a limited fiduciary responsibility to procure requested coverage for an insured, to correctly name the insured on the policy, and to correctly advise the insured of the nature and extent of his coverage. *Phillips v. State Farm Mut. Auto. Ins. Co.*, 497 S.E.2d 325, 327 (N.C. Ct. App. 1998); *see also Baldwin v. Lititz Mut. Ins. Co.*, 393 S.E.2d 306, 307 (N.C. Ct. App. 1990) (“The relationship between insurance agent and an insured is fiduciary as well as contractual.”).

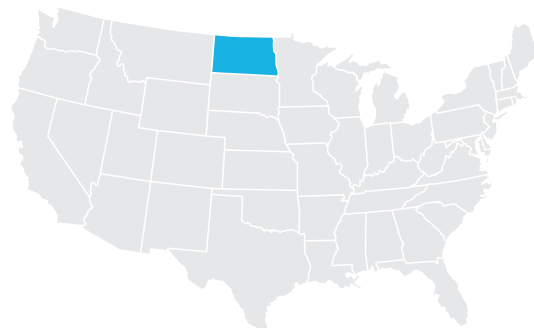
The duty does not, however, obligate the producer to procure a policy for the insured that was not requested. *Phillips*, 497 S.E.2d at 327. And, the producer does not have a duty to advise the insured of other types of insurance coverage for which he is eligible if that information was not requested. *Cobb*, 715 S.E.2d at 548.

An implied duty to advise of coverage needs may be shown if (1) the producer received consideration beyond payment of the commission, (2) the insured made a clear request for advice, or (3) there is a long-term course of dealings that would put an objectively reasonable insurance producer on notice that the producer’s advice was being sought and relied on. *Id.*; *see also Bigger v. Vista Sales & Mktg., Inc.*, 505 S.E.2d 891, 893 (N.C. Ct. App. 1998) (holding a producer has no duty to advise when the insured does not inquire about the coverage).

The insured has a duty to read her policy, and failure to do so may amount to contributory negligence in a claim against the producer so long as nothing has been said or done to mislead the insured. *Olvera v. Charles Z. Flack Agency, Inc.*, 415 S.E.2d 760, 762 (N.C. Ct. App. 1992).

NC

North Dakota



No affirmative duty to advise absent a special relationship.

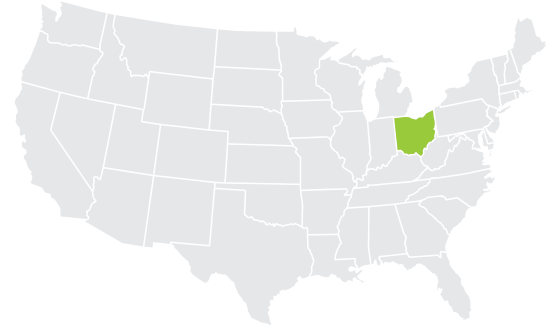
COMMENT

In North Dakota, producers have a general duty to exercise the skill and care that a reasonably prudent person engaged in the insurance business would use under similar circumstances. *APM, LLLP v. TCI Ins. Agency, Inc.*, 877 N.W.2d 34, 36 (N.D. 2016); *Rawlings v. Fruhwirth*, 455 N.W.2d 574, 577 (N.D. 1990). This duty is generally limited to acting in good faith and following the client's instructions. *Bjorneby v. Nodak Mut. Ins. Co.*, 882 N.W.2d 232, 237 (N.D. 2016).

There is no duty to advise or procure additional coverage not requested absent a special relationship. *Rawlings*, 455 N.W.2d at 578. For a special relationship to exist, “[t]here must be, in a long-standing relationship, some type of interaction on a question of coverage, with the insured relying on the expertise of the insurance agent to the insured’s detriment.” *Id.*; see also *Dahms v. Nodak Mut. Ins. Co.*, 920 N.W.2d 293, 299 (N.D. 2018) (affirming the trial court’s finding that no special circumstances existed because, although the parties had a long-standing relationship, the insured sought no advice about coverage for the garage and did not contact the producer regularly, and the producer did not visit the insured’s property).

ND

Ohio



No affirmative duty to advise absent producer's knowledge that insured is relying on producer's advice.

COMMENT

In Ohio, an insurance producer has a duty to exercise good faith and reasonable diligence in obtaining insurance that her customer requests. *Tornado Techs., Inc. v. Quality Control Inspection, Inc.*, 977 N.E.2d 122, 125 (Ohio Ct. App. 2012).

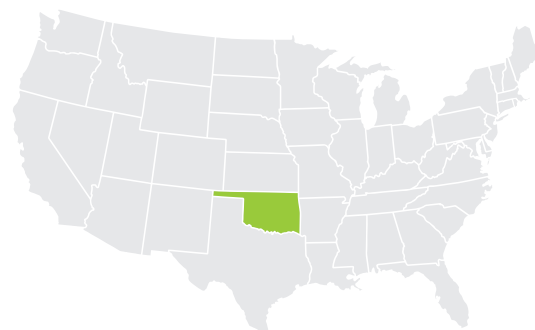
The relationship between insured and producer is not generally a fiduciary one, and a fiduciary relationship cannot be unilaterally created. *Slovak v. Adams*, 753 N.E.2d 910, 916-17 (Ohio Ct. App. 2001).

Absent special circumstances, the relationship between an insurance producer and client will usually be nothing more than an ordinary business relationship that is different from doctor-patient and attorney-client relationships. *Tornado Techs., Inc.*, 977 N.E.2d at 126-27. However, if the producer knows the client is relying on his advice, the producer may have a duty to exercise reasonable care in advising the client. *First Catholic Slovak Union of U.S. & Canada v Buckeye Union Ins. Co.*, 499 N.E.2d 1303, 1305 (Ohio Ct. App. 1986); *see also The Island House Inn, Inc. v. State Auto Ins. Cos.*, 782 N.E.2d 156, 158 (Ohio Ct. App. 2002) (stating a producer has a duty to advise insureds as to their insurance needs when the producer knows that the customer is relying on his expertise).

The insured has a duty to examine his policy and notify the producer if coverage is inadequate. *Amankwah v. Liberty Mut. Ins. Co.*, 62 N.E.3d 814, 819 (Ohio Ct. App. 2016). However, the insured's failure to read his policy is only contributory negligence, not a basis to preclude a claim for failure to procure. *Robson v. Quentin E. Cadd Agency*, 901 N.E.2d 835, 837 (Ohio Ct. App. 2008).

OH

Oklahoma



No affirmative duty to advise absent a special relationship.

COMMENT

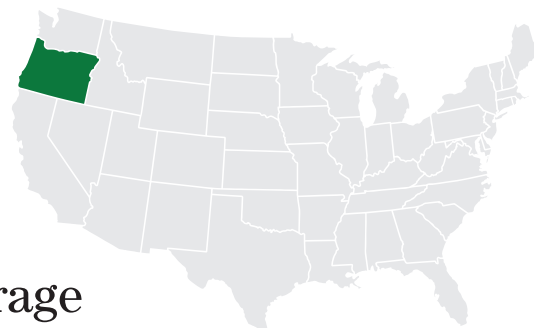
In Oklahoma, an insurance producer has a duty to act in good faith and use reasonable care, skill and diligence to obtain the insurance requested by the client. *Kutz v. State Farm Fire & Cas. Co.*, 189 P.3d 740, 744-45 (Okla. Civ. App. 2008).

Insurance producers do not have a duty to advise an insured with respect to his insurance needs. *Rotan v. Farmers Ins. Grp. of Cos.*, 83 P.3d 894, 895 (Okla. Civ. App. 2003). This duty is not expanded by general requests for “full coverage” or “adequate protection,” and the producer need only offer that which is required by law or which covers the needs disclosed by the client. *Id.*

The producer has no fiduciary relationship with the insured. *Cosper v. Farmers Ins. Co.*, 309 P.3d 147, 150 (Okla. Civ. App. 2013); *cf. Swickey v. Silvey Cos.*, 979 P.2d 266, 269 (Okla. Civ. App. 1999) (considering whether the producer’s specialized knowledge created a special relationship between the producer and the insured such as to give rise to a fiduciary relationship but acknowledging there are no Oklahoma cases in which an insurance producer was found to owe a fiduciary duty to an insured with respect to procuring additional coverage).

OK

Oregon



Affirmative duty to explain the coverage procured. No duty to advise about additional coverages absent a special relationship.

COMMENT

In Oregon, when an insurance producer agrees to procure insurance, the producer owes a duty to exercise reasonable skill and care in obtaining and, in some cases, maintaining that insurance. *Kabban v. Mackin*, 801 P.2d 883, 890 (Or. Ct. App. 1990); *Richardson v. Guardian Life Ins. Co. of Am.*, 984 P.2d 917, 925 (Or. Ct. App. 1999).

The client's request may be inferred from his conversations with the producer, and the producer has a duty to explain the extent to which the coverage procured actually provides the coverage requested. *Caddy v. Smith*, 877 P.2d 667, 669-70 (Or. Ct. App. 1994).

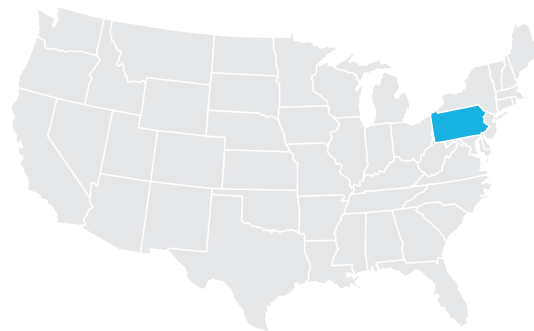
Under certain circumstances, a producer may also have a duty to advise the insured regarding different policies and coverages. *Kabban*, 801 P.2d at 883-84.

Captive insurance producers are the agents of the insurer and owe no duty of care to the insured absent other circumstances establishing a special relationship. *Lewis-Williamson v. Grange Mut. Ins. Co.*, 39 P.3d 947, 949-50 (Or. Ct. App. 2002).

A special relationship arises when the insured turns over control of insurance needs to the producer and relies on the producer to act on her economic behalf, and the producer is aware of this reliance. *Id.* at 950.

OR

Pennsylvania



No affirmative duty to advise absent a special relationship.

COMMENT

In Pennsylvania, an insurance producer owes the client a duty to obtain the coverage that a reasonably prudent professional insurance producer would have obtained under the circumstances. *Berlin v. Md. Cas. Co.*, 60 Pa. D. & C.4th 457 (Com. Pl. 2002). The producer's duty to use reasonable care is subject to the insured providing the requisite information for the producer to procure coverage; the insured's failure to do so amounts to contributory negligence, which may bar the insured's claim for failure to procure. *Id.* at 461-64.

Generally, an insurance producer has no duty to advise the insured regarding the availability of insurance or to make coverage recommendations. *Reusch v. Allstate Ins. Co.*, 35 Pa. D. & C.3d 448, 451 (Ct. Com. Pl. 1985).

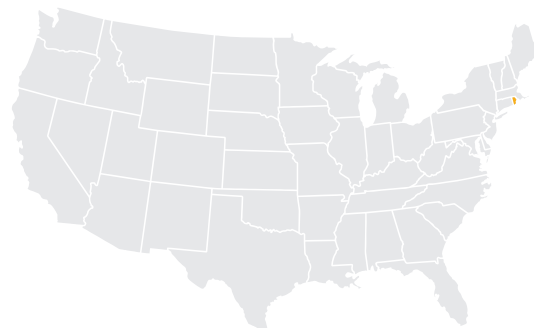
However, a duty to advise may exist under special circumstances, such as when the producer acts as an insurance counselor through an extensive and complex course of dealing regarding the insured's business matters or when the producer receives consideration for his services apart from the premium paid by the client for the policy. *Id.*; see also *Stern Family Real Estate P'ship v. Pharmacists Mut. Ins. Co.*, No. 06-130, 2007 WL 951603, at *4 (W.D. Pa. Mar. 27, 2007) ("There is no general duty to provide advice absent a special relationship..."); *Wisniski v. Brown & Brown Ins. Co. of Pa.*, 906 A.2d 571, 579 n.6 (Pa. Super. Ct. 2006) ("[T]he insured has both the capacity and the duty to inquire about the scope of insurance coverage, rather than rely on 'hand holding and substituted judgment.'"); cf. *Decker v. Nationwide Ins. Co.*, 83 Pa. D. & C.4th 375, 380 (Ct. Com Pl. 2007) (stating the producer "has a correlative duty to advise insureds of the availability of other types of insurance benefits").

For most insurance transactions, the relationship is an arm's length business relationship and cannot be regarded as a confidential relationship. *Wisniski*, 906 A.2d at 578-79; see also *Dixon v. Nw. Mut.*, 146 A.3d 780, 787 (Pa. Super. Ct. 2016) (stating a producer typically does not incur a fiduciary duty by selling a policy to an insured; the producer must have a confidential relationship with the insured to give rise to a fiduciary duty). To establish a confidential relationship, there generally must be special vulnerabilities on the part of the insured, such as family relations, lack of insurance knowledge, and undue influence. *Yenchi v. Ameriprise Fin., Inc.*, 161 A.3d 811, 821 (Pa. 2017).

PA

Rhode Island

No affirmative duty to advise.

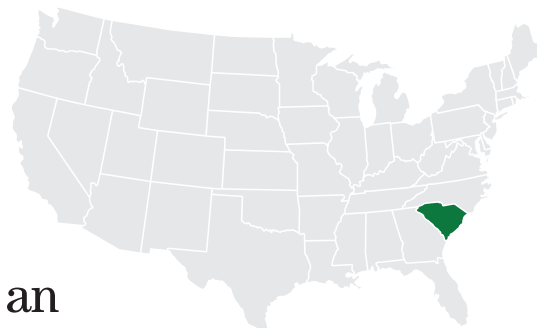


COMMENT

In Rhode Island, a producer has a duty to use reasonable care, diligence and judgment to procure the insurance requested by the client. *Triton Realty L.P. v. Almeida*, No. PC 04-2335, 2006 WL 828733, at *4 (R.I. Super. Ct. Mar. 29, 2006). The extent of the duty is defined by the client's request, so even if a fiduciary relationship existed, the producer would have no duty absent a request from the insured. *Kenney Mfg. Co. v. Starkweather & Shepley, Inc.*, 643 A.2d 203, 208 (R.I. 1994).

The producer has no affirmative duty to advise the client about coverages or limits available from other insurers. *Dubreuil v. Allstate Ins. Co.*, 511 A.2d 300, 301-02 (R.I. 1986). A producer can satisfy its contractual obligations to an insured client by procuring adequate coverage (under the circumstances) and expressly and unambiguously informing the insured that other desired coverage was unavailable. *Water St. Dev., Ltd. v. J.W. Corr Agency, Inc.*, 539 A.2d 967, 970 (R.I. 1988).

South Carolina



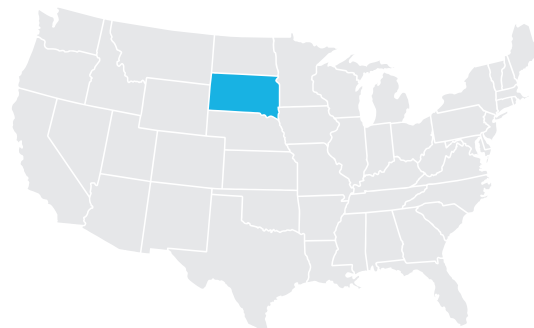
No affirmative duty to advise absent an assumption of that duty or an ongoing, special relationship.

COMMENT

In South Carolina, an insurance producer has a general duty to exercise due care to procure the coverage requested by the client. *Riddle-Duckworth, Inc. v. Sullivan*, 171 S.E.2d 486, 490 (S.C. 1969).

There is no general duty to advise an insured about his coverage, but a producer may expressly assume a duty by undertaking to advise the insured, or impliedly assume that duty if the producer receives additional compensation for providing advice, the insured clearly requests the advice, or there is a course of dealing that indicates to the producer that the client seeks and relies upon the producer's advice. *Houck v. State Farm Fire & Cas. Ins. Co.*, 620 S.E.2d 326, 329 (S.C. 2005). This can include explaining coverage and limitations to the insured when the insurance producer is an employee of the insurance company and providing accurate information to the client. *Rickborn v. Liberty Life Ins. Co.*, 468 S.E.2d 292, 296-300 (S.C. 1996). A request for "full coverage," "the best policy," or similar language does not create a duty for the producer to determine and advise the insured about coverage needs. *Trotter v. State Farm Mut. Auto. Ins. Co.*, 377 S.E.2d 343, 347 (S.C. Ct. App. 1988). But the circumstances of an ongoing or special relationship (e.g., the course of dealing between producer and insured) may create an affirmative duty to advise the insured on certain coverages. *Id.* at 348.

South Dakota



No affirmative duty to advise absent special circumstances.

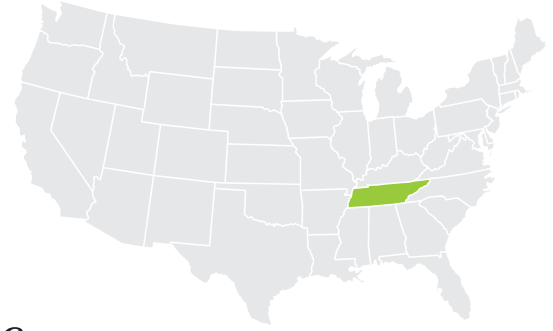
COMMENT

In South Dakota, an insurance producer has a duty to a potential insured to use reasonable diligence to obtain the requested insurance or to seasonably notify the potential insured of her inability to do so. *Cole v. Wellmark of S.D., Inc.*, 776 N.W.2d 240, 251 (S.D. 2009). If the client appears clear about what he wants, the producer has no duty to inquire further into the client's wishes. *Trammell v. Prairie States Ins. Co.*, 473 N.W.2d 460, 462 (S.D. 1991); *see also City of Colton v. Schwebach*, 557 N.W.2d 769, 771 (S.D. 1997) (noting city was clear about its desired coverage and requested replacement policy that was the same as expiring policy).

There is no affirmative duty to advise unless the producer assumes the duty, the client requests advice regarding coverage, or there is a course of dealing that indicates the client seeks and relies upon the producer's advice. *Fleming v. Torrey*, 273 N.W.2d 169, 171 (S.D. 1978).

SD

Tennessee



No affirmative duty to advise absent an assumption of the duty or a specific undertaking by the producer.

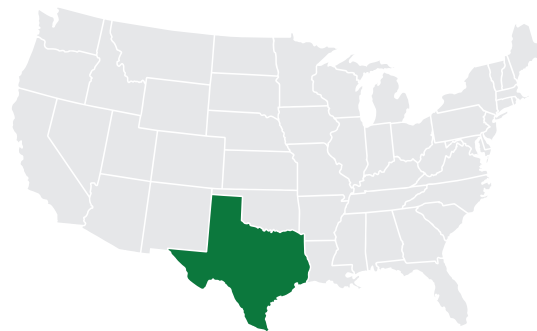
COMMENT

In Tennessee, insurance producers have a general duty to exercise reasonable skill, care and diligence to procure the insurance requested by the client. *Morrison v. Allen*, 338 S.W.3d 417, 426 (Tenn. 2011). This duty includes keeping the insured fully informed of all material knowledge regarding the risk entrusted to the producer. *Aetna Cas. & Sur. Co. v. Summar*, 545 S.W.2d 730, 732 (Tenn. 1977). Generally, absent an agreement creating continuing responsibilities, a producer has no affirmative duty to advise the insured about coverages after the producer obtains the insurance the client requested. *Weiss v. State Farm Fire & Cas. Co.*, 107 S.W.3d 503, 506 (Tenn. Ct. App. 2001). However, the producer may assume duties beyond those of an ordinary producer, thereby obligating him to advise, select and recommend appropriate coverage. *See Magnavox Co. of Tenn. v. Boles & Hite Constr. Co.*, 585 S.W.2d 622, 627 (Tenn. Ct. App. 1979) (producer had a duty to ascertain required coverages for contractor client by undertaking to provide complete liability coverage); *Barrick v. State Farm Mut. Auto. Ins. Co.*, No. M2013-01773-COA-R3-CV, 2014 WL 2970466, at *4-5 (Tenn. Ct. App. June 27, 2014).

TN

Texas

No affirmative duty to advise absent special circumstances.



COMMENT

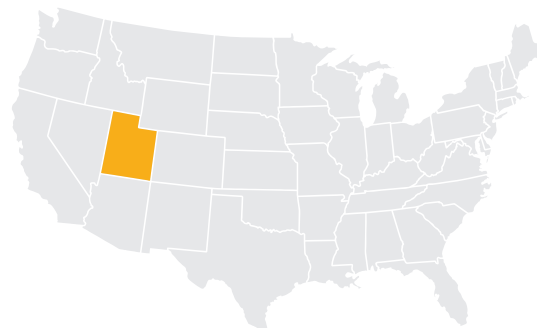
In Texas, insurance producers have a duty to use reasonable care, skill and diligence to procure coverage requested by the client, and to promptly notify the client if the producer is unable to do so. *May v. United Services Ass'n*, 844 S.W.2d 666 (Tex. 1992). If an insured requests the “best available” policy, the producer may have a duty to advise the client about other, more favorable policies. *Id.* at 671.

When a producer has actual or constructive knowledge directly concerning coverage that the insured requested, the producer has a duty to inform the insured about how that information should be used to obtain coverage. *N. Assurance Co. of Am. v. Stan-Ann Oil Co.*, 603 S.W.2d 218, 224 (Tex. Civ. App. 1979).

Even if the producer has knowledge of her customer’s need for additional insurance, no legal duty arises on the part of the producer to extend the insurance protection, especially in the absence of prior dealings in which the producer customarily has taken care of her customer’s needs without consulting him. *Pickens v. Tex. Farm Bureau Ins. Cos.*, 836 S.W.2d 803, 805 (Tex. App. 1992).

An affirmative duty to advise arises under special circumstances, including when the insurance agent has held himself out as an insurance specialist or expert or when the agent expressly or by conduct agrees to give advice to select insurance appropriate for the client’s needs. *May*, 844 S.W.2d at 676 (Gammage, J., dissenting).

Utah



No affirmative duty to advise.

COMMENT

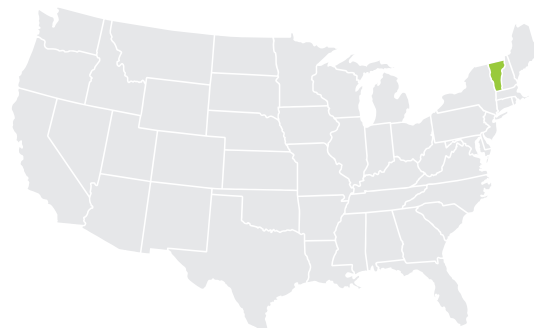
In Utah, a producer may have a duty to procure insurance when she accepts an application, makes a bare acknowledgment of a contract covering a specific kind of casualty, lulls the insured into believing a contract has been effected, or has taken care of the insured's needs without consultation in the past. *Harris v. Albrecht*, 86 P.3d 728, 735 (Utah 2004).

The duty to procure is limited to the information provided by the insured to the producer, or the information the producer obtains when given express authority to do so, and the producer has no affirmative duty to procure a policy that adequately covers all of the insured's risks. *Asael Farr & Sons Co. v. Truck Ins. Exch.*, 193 P.3d 650, 661 (Utah Ct. App. 2008).

However, the producer has a duty to accurately communicate the contents of an insurance policy to the insured and honestly answer consumer questions. *Youngblood v. Auto-Owners Ins. Co.*, 158 P.3d 1088, 1096 (Utah 2007).

Vermont

No affirmative duty to advise absent special circumstances.



COMMENT

In Vermont, insurance producers have a general duty to use reasonable care and diligence to procure insurance that will meet the expressed needs of the client. *Booska v. Hubbard Ins. Agency, Inc.*, 627 A.2d 333, 335 (Vt. 1993). The producer has no affirmative duty to advise the insured as to coverage needs. *Hill v. Grandey*, 321 A.2d 28, 33 (Vt. 1974).

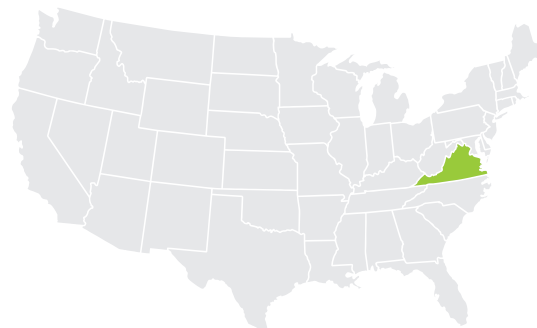
A producer has a duty to be generally fair and truthful in explaining the nature of the policy but has no duty to warn the insured about the impact of complex contract language on every eventuality. *Booska*, 627 A.2d at 335.

As long as the producer does the job without negligence, the task of reading and understanding the policy belongs to the insured, and the producer has no obligation to suggest additional coverages. *Id.* at 335-36.

The producer generally has no duty beyond procuring coverage in accordance with the client's expressed needs absent special circumstances. *Rocque v. Coop. Fire Ins. Ass'n of Vt.*, 438 A.2d 383, 386 (Vt. 1981); *see also Booska*, 627 A.2d at 334-36 (finding the insureds failed to demonstrate a genuine issue of material fact as to any special relationship between themselves and the producer despite the insureds' assertions regarding their twelve-year relationship with their producer and their reliance on his advice and expertise).

An insured's request to cover "all" of his property, without more, does not impose an affirmative duty on the insurance producer to ask about additional structures the insured owns unless the producer has particular expertise in the relevant coverage. *50 Pine St. Condo. Ass'n v. Bowen Livingston, Inc.*, No. 2004-020, 2004 WL 5582108, at *2 (Vt. June 1, 2004).

Virginia



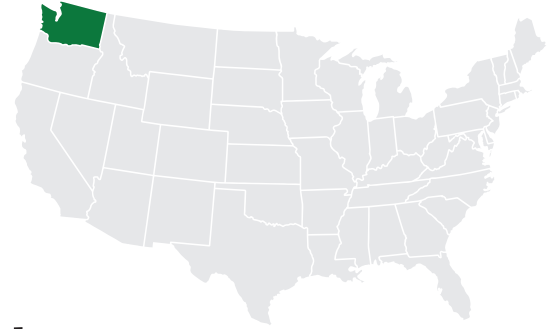
No affirmative duty to advise absent a contractual obligation.

COMMENT

In Virginia, insurance producers owe their clients a strictly contractual duty in effecting insurance. *Filak v. George*, 594 S.E.2d 610, 613-14 (Va. 2004). There appears to be no affirmative duty to advise absent a contractual obligation to do so. *Id.* at 612-13; *Augusta Mut. Ins. Co. v. Mason*, 645 S.E.2d 290, 293 (Va. 2007).

Virginia differentiates between special agents and general agents. *Stacy v. J.C. Montgomery Ins. Corp.*, 367 S.E.2d 499, 500-01 (Va. 1988). Special agents are authorized only to perform a specific act. *Id.* Their powers are strictly construed in accordance with the limited powers granted under the contract with the principal and include no implied powers outside those “indispensable” to the exercise of their express authority. *See Id.* at 501 (declining to find the special agent had a duty to advise because the insured had only asked the agent to purchase insurance, and the agent was therefore “merely entrusted with the authority to purchase insurance for the owner”).

Washington



No affirmative duty to advise absent a special relationship or other special circumstances.

COMMENT

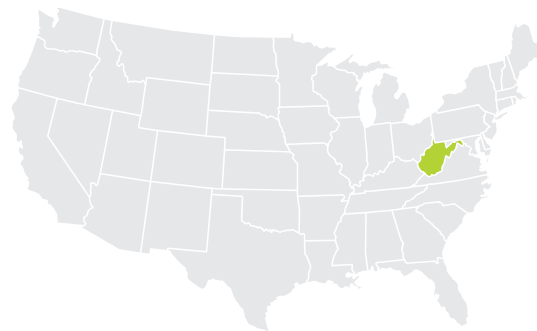
In Washington, producers have a general duty of reasonable care to procure the insurance requested by the client. *McClammy v. Cole*, 243 P.3d 932, 934 (Wash. Ct. App. 2010); *Hardt v. Brink*, 192 F. Supp. 879, 881 (W.D. Wash. 1961).

A producer must timely notify client of his failure or inability to procure the requested insurance. *Bates v. Bowles White & Co.*, 353 P.2d 663, 666 (Wash. 1960).

The producer generally has no duty to advise the insured about the adequacy of his coverage or to recommend higher coverage limits. *Junfang He v. Norris*, 415 P.3d 1219, 1221-22 (Wash. Ct. App. 2018).

However, such a duty may arise if there is a special relationship between the producer and insured. *Lipscomb v. Farmers Ins. Co. of Wash.*, 174 P.3d 1182, 1186 (Wash. Ct. App. 2007). A special relationship exists if the producer holds himself out as an insurance specialist and receives additional compensation for his consultation and advice, or he has a long-standing relationship with the insured, and the insured relied to his detriment on the producer's expertise regarding a question of coverage. *Id.*; *AAS-DMP Mgmt., L.P. v. Acordia NW, Inc.*, 63 P.3d 860, 863-64 (Wash. Ct. App. 2003) (stating the duty to render advice "has been termed a fiduciary duty").

West Virginia



No affirmative duty to advise absent special circumstances.

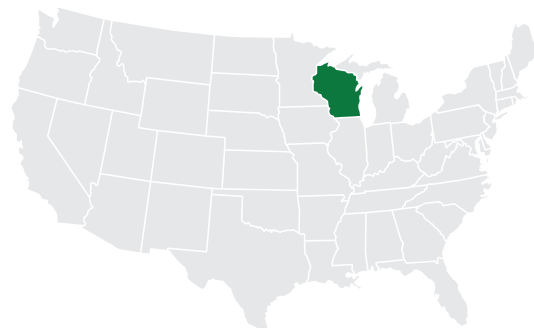
COMMENT

In West Virginia, insurance producers may be held liable for failure to procure insurance as promised or represented to the client if the client relied on the promise or representation. *Parsley v. Gen. Motors Acceptance Corp.*, 280 S.E.2d 703, 707 (W. Va. 1981).

It does not appear that West Virginia recognizes a cause of action for a producer's alleged failure to advise the insured about available coverages, but the federal courts in West Virginia have applied the special relationship test to determine whether the producer had a duty to advise. *See Hill, Peterson, Carper, Bee & Deitzler, P.L.L.C. v. XL Specialty Ins. Co.*, 261 F. Supp. 2d 546, 548 (S.D.W. Va. 2003) (applying analogous authority from other jurisdictions on special relationships after finding no West Virginia authority applying the special relationship factors); *see also Soyoola v. Oceanus Ins. Co.*, 986 F. Supp. 2d 695, 709 (S.D. W. Va. 2013) (noting the absence of West Virginia law on the duty to advise and looking to Indiana's application of the special relationship test); *cf. Aldridge v. Highland Ins. Co.*, No. 15-0658, 2016 WL 3369562 at *5 (W. Va. June 17, 2016) (stating West Virginia has never recognized an insurance producer's duty to advise an insured about coverage nor has it recognized the special relationship exception that would trigger such a duty).

The alleged negligence (and underlying duties) of captive producers who are employees of the insurance company will generally be imputed to the insurer, and such producers may only be sued individually in limited circumstances, such as if they negligently create an expectation of coverage through a material misrepresentation. *Lawson v. Am. Gen. Assurance Co.*, 455 F. Supp. 2d 526, 530 (S.D.W. Va. 2006).

Wisconsin



No affirmative duty to advise about coverages or limits absent special circumstances.

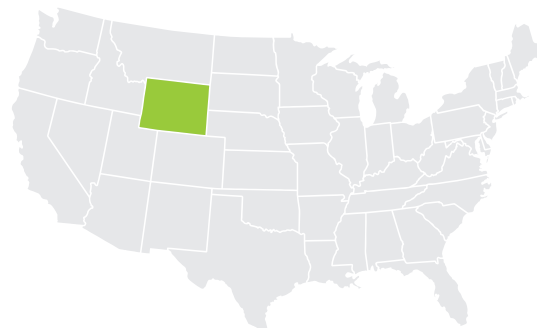
COMMENT

In Wisconsin, insurance producers have a general duty to exercise reasonable skill, care and diligence to procure the insurance he agreed to procure. *Avery v. Diedrich*, 734 N.W.2d 159, 164 (Wis. 2007).

Absent special circumstances, there is no affirmative duty to advise about types or adequacy of coverage or to recommend higher policy limits. *Id.* at 165; *Nelson v. Davidson*, 456 N.W.2d 343, 344 (Wis. 1990). Special circumstances include additional payment for advice, an express agreement that the producer will advise the insured about her coverage, the producer holding himself out as expert and the insured relying on that expertise, or the producer knowing the client sought out and relied upon his advice. *Avery*, 456 N.W.2d at 347; *Nelson*, 456 N.W.2d at 347.

However, a producer may have a duty to “inquire further” and to inform the insured that the current policy could be inadequate based on information the insured provides to the producer. *See Poluk v. J.N. Manson Agency, Inc.*, 653 N.W.2d 905, 909 (Wis. Ct. App. 2002) (finding duty to inform insured of possible inadequate coverage when insured notified the producer that its tenant was moving out prior to the sale of the building and the insured’s policy contained a vacancy clause). Being a member of the Independent Insurance Agents & Brokers of America, which advertises independent producers nationally as “offering expert advice,” is not a “holding out” as an insurance expert that would create a special relationship and duty to advise. *Lisa’s Style Shop, Inc. v. Hagen Ins. Agency, Inc.*, 511 N.W.2d 849, 853 (Wis. 1994).

Wyoming



No affirmative duty to advise absent a special relationship.

COMMENT

In Wyoming, an insurance producer who undertakes to procure a specific type of coverage owes the insured a duty to exercise reasonable care and skill in procuring the correct coverage. *Small v. King*, 915 P.2d 1192, 1194 (Wyo. 1996).

A request for “full coverage” does not trigger the producer’s duty to provide correct coverage because such a request is not a specific inquiry about a specific type of coverage. *Id.*

Absent a special relationship, once a producer has secured coverage there is no continuing duty to advise, direct or counsel the insured about the insured’s coverage, and there is generally no duty to uncover or give advice regarding possible gaps in coverage. *Gordon v. Spectrum, Inc.*, 981 P.2d 488, 492 (Wyo. 1999).

Insureds have a duty to read their policies, and failure to do so may preclude a negligence claim against the producer. *Broderick v. Dairyland Ins. Co.*, 270 P.3d 684, 690 (Wyo. 2012). However, the insured’s failure to read the policy will not preclude a claim for reformation of the policy. *W.N. McMurtry Constr. Co. v. Cmty. First Ins., Inc. Wyo.*, 160 P.3d 71, 78 (Wyo. 2007).

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MYLES P. HASSETT has over 30 years' experience as a trial lawyer and insurance expert. He has served as a Judge *pro tem* for the Arizona Superior Court (Maricopa County) and has been awarded Martindale Hubbell's highest peer-reviewed "AV" designation since 2006. Mr. Hassett is listed in Southwest Super Lawyers for his professional liability defense practice, having litigated over 1,500 cases involving insurers, insurance producers and policyholders. Mr. Hassett has also briefed and argued more than 50 insurance-related appeals in state and federal courts resulting in multiple published opinions on issues of first impression, including precedent-setting decisions from the Arizona Supreme Court on insurance producer liability.

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