

Two Recent Decisions Highlight Parameters Of Broker Liability For Negligent Procurement Of Insurance (Insurance Law Alert)

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The Eighth Circuit affirmed the dismissal of negligence claims against an insurance agent, whereas a California jury concluded that an agent was professionally negligent in failing to procure insurance.

In *I Square Management, LLC v. McGriff Ins. Svs., Inc.*, 2022 WL 16828847 (8th Cir. Nov. 9, 2022), policyholders sued their insurance agent for negligence after learning that their policy did not cover flood-related losses. The policyholders alleged that their agent advised them that a builder's risk policy was unnecessary for a construction project, which resulted in the absence of coverage for damage to certain property stored in a warehouse.

Applying Arkansas law, the court explained that as a general matter, the duty is on the insured to obtain the coverage needed and that an insurance agent is under no duty to provide information about additional coverage. The court noted that while some jurisdictions have imposed a duty on the agent to advise a client of appropriate coverage where a "special relationship" exists between the parties, it concluded that Arkansas was unlikely to adopt such an exception, and if it did, would apply it very narrowly in rare situations. More specifically, the court explained that neither the insured's reliance on the agent's expertise nor the agent's representations of skill and knowledge created a special relationship, stating that "it would be the rare agent who does not hold himself out as highly skilled, and the rare insured who doesn't rely on the agent's skill in making insurance selections." The court also deemed it irrelevant that the agent engaged in a personalized pitch to the insureds, which resulted in them abandoning their prior agent and hiring the current agent. Similarly, the court was not persuaded that the agent's communications with various participants in the construction project established a special relationship, noting that the communications were "isolated and infrequent" and that the agent's involvement in the project was tangential. Finally, the court rejected the contention that the agent voluntarily assumed a duty to ensure adequate coverage, emphasizing that a single email indicating that a builder's risk policy was unnecessary did not constitute an assumption of an additional duty of care.

In contrast, a jury awarded a policyholder more than \$4 million in damages after finding that an insurance agent was professionally negligent in *Daniels v. Samrick*, No. 18 CV 001467 (Cal. Super. Ct. Oct. 17, 2022). After a fire destroyed insured property, the policyholders sued their agent for professional negligence, negligent misrepresentation and breach of fiduciary duty, alleging that the agent failed to comply with their specific requests to increase coverage limits. In support of their claims, the policyholders pointed to the agent's representations and warranties

about expertise, as well as the long standing relationship and course of dealings for decades. After a three week trial, the jury found that the agent was professionally negligent and that the negligence was a substantial factor in causing harm to the policyholders. However, the jury also concluded that the policyholders were partially responsible based on their negligence in obtaining the coverage they wanted.

Authors and
Contacts

Bryce Friedman
Partner
bfriedman@stblaw.com
[+1-212-455-2235](tel:+12124552235)

Chet Kronenberg
Partner
ckronenberg@stblaw.com
[+1-310-407-7557](tel:+13104077557)

