Do Insurance Agents Have a Duty to Advise?

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The General Duty of Care

At minimum, insurance agents must act with reasonable care, skill and diligence in procuring requested insurance. All states expect that insurance agents will conform to a standard of care applicable to a reasonable agent in that state.
Do Insurance Agents Have a Duty to Advise?

When determining whether an agent’s standard of care includes a “duty to advise,” the rules vary from state to state...
State Rules on Duty to Advise
(from most to least likely to find)

- Professional Standard States (duty to advise)
- States Requiring Special Relationship or Special Circumstances for Duty to Advise
  - Special Relationship easily established
  - Special Relationship established case-by-case
  - Hard-to-Establish Special Relationship
- Order-Taker States (no duty to advise)
DO INSURANCE AGENTS HAVE A DUTY TO ADVISE?

- **Blue**: Yes - Professional Standard Applies
- **Teal**: Yes - Easily Established Special Relationship
- **Yellow**: Yes - Case-By-Case Special Relationship
- **Green**: Yes - Hard to Establish Special Relationship
- **Red**: No - Order-Taker Status Applies
Order-Taker States (No Duty to Advise)

States that require the agent to procure only the coverage requested and/or timely notify the insured/prospect of an inability to do so. There is no duty to advise, but the agent may still be found liable for providing false or misleading information.
Special Circumstances
(Creating a Duty to Advise)

- Agent assumes a duty to advise by agreement or promise to the insured, or by leading the insured to believe advice will be provided
- Agent holds self out as an expert or counselor, through advertising or other means
- Agent knows the customer seeks out and/or relies on the agent’s advice
- Agent volunteers inaccurate information
Special Circumstances
(Creating a Duty to Advise)

- Agent misrepresents the nature or extent of coverage
- Agent selects limit without insured's input, implying adequate coverage
- Agent undertakes to provide the client with “complete coverage”
- Ambiguous requests from the insured
Special Relationships
(Giving Rise to a Duty to Advise)

- Agent and customer have a longstanding relationship/particular course of dealing

- Longstanding course of dealing coupled with a history of advising the customer on coverage needs

- Relationship involves regular counseling and advising of insurance needs, irrespective of duration

- Agent holds self out as an expert plus the customer’s reliance on the agent's expertise
Special Relationships
(Giving Rise to a Duty to Advise)

- Agent holds self out as an expert plus additional compensation beyond usual commission
- Agent exercises broad discretion on the insured’s behalf
- Agent provides the customer with unsolicited advice about types or limits of coverage
- Interaction on the question of coverage and detrimental reliance by the customer
In states that apply a professional standard of care, insurance agents are considered experts simply because they have an insurance license. Insured may prove a breach of the standard simply by showing the agent failed to offer the coverage or limit about which the insured should have been advised. Establishing breach usually requires expert testimony.
Let’s take a road trip!

DO INSURANCE AGENTS HAVE A DUTY TO ADVISE?

- Yes - Professional Standard Applies
- Yes - Easily Established Special Relationship
- Yes - Case-By-Case Special Relationship
- Yes - Hard to Establish Special Relationship
- No - Order-Taker Status Applies
We begin in the "Pacific Wonderland"
Case Facts: Insured was building a home and expressed a concern about coverage for contractors working on the home, but made no specific reference to workers’ compensation insurance. The agent told the insured she would “take care of it” and procured a standard homeowners policy. A contractor was injured and coverage was denied under the policy because it excluded workers’ compensation.
The Court held . . .

a) Agent had no duty to obtain coverage that was not requested, nor advise insured of desirability of that coverage.

b) It was unreasonable for insured to rely on agent’s expertise since insured was a sophisticated consumer.

c) Insured had no duty to read the policy and the agent was responsible for any inadequacies in coverage.

d) Insured’s concern about coverage for contractors, coupled with agent’s statement that she would “take care of it” was a special circumstance that supported a duty to advise.
d) Insured’s concern about coverage for contractors, coupled with agent’s statement that she would “take care of it” was a special circumstance that supported a duty to advise (*Caddy v. Smith*, 877 P.2d 667 (Ore. App. 1994)).

Oregon requires agents to explain whether the coverage procured actually provides the protection requested by the customer. Because of the insured’s request concerning coverage for contractors, agent had a duty to advise insured of the policy exclusion for workers compensation.
Welcome to the Golden State!
Case Facts: Insured was struck by a vehicle, suffering severe injuries. UIM coverage was insufficient to compensate for resulting damages. Insureds alleged agent breached duty to advise of the availability of UIM coverage under an Umbrella insurance policy. Insureds had used the same agent for 20 years but had not inquired about UIM umbrella coverage at any time.
The Court held . . .

a) Agents do not have a general duty to advise of additional coverage.

b) Question of fact created by evidence that insureds would have purchased the coverage had they been made aware of it.

c) Because insurance company had a policy of annual coverage review, agent was negligent in failing to perform this assessment.

d) The agent and insured lived on the same street; this proximity created a “special relationship” under California law.
a) Agents do not have a general duty to advise of additional coverage. (*Fitzpatrick v. Hayes*, 57 Cal. App. 4th 916 (1997)).

California recognizes an additional duty to advise only in certain circumstances such as agent misrepresentation on nature, extent, or scope of coverage, specific requests or inquiries by the insured, or the agent assuming an additional duty to advise.
The Sunshine State . . . Where age is only a number
Case Facts: Insureds owned a chain of grocery stores that sustained business income losses after a hurricane-related power outage. The insurance claim was denied because of a policy provision limiting hurricane coverage to property and equipment damages. The insureds sued in reliance on the agent’s representation that they were “fully covered . . . and did not need any other coverage.”
The Court held . . .

• a) Insureds have a duty to read the policy and alert agent if any inadequacies exist.

• b) “Full coverage” requests are too vague; non-suit ordered.

• c) The coverage needed was not offered by the insurance company, and agent should have advised insured of this.

• d) Insureds reasonably relied on representation that they were fully covered.
d) Insureds reasonably relied on representation that they were fully covered. (Warehouse Foods, Inc. v. Corp. Risk Mgmt. Servs., Inc., 530 So.2d 422 (Fla. App. 1988).

Florida recognizes a duty to advise depending on the scope of the agent's undertaking and relationship with the insured. Periodic policy reviews, requests for full coverage, and reliance on the agent's expertise may create an additional duty.
Let’s put Georgia on our minds
Case Facts: Insureds’ home was destroyed by fire and then suffered further damage when adjuster stated placing tarps was unnecessary. Homeowners policy at inception had guaranteed replacement cost, but had been renewed with a 125% insurance-to-value cap. Insured, employed as a corporate insurance director, admitted he had received renewal policy but had not read it. Post-loss, Agent told insured that cap was waived. Insured sued claiming coverage was insufficient to replace home.
a) The agent misrepresented the extent of coverage by assuring the insured that the policy cap would be waived.

b) Even if the insureds relied on the agent’s expertise, they still had a duty to read the policy documents.

c) Adjuster held liable for not recommending that tarps be placed on the property post-loss.

d) The insured was a director of corporate insurance and therefore considered an “expert” himself. Reliance on agent’s expertise held unreasonable.
b) Even if the insureds relied on the agent’s expertise, they still had a duty to read the policy documents. *(McIntyre & Edwards, Inc. v. Rich, 599 S.E.2d 15 (Ga. App. 2004)).*

Under Georgia law, a special relationship is difficult to establish. Agents there must use reasonable care, skill and diligence to procure the insurance requested by the customer. While a customer may reasonably rely on an agent’s expertise, the agent’s duty to advise will be relieved if the insured’s “minimal review” of the policy would have revealed the deficiency.
Welcome to Wild & Wonderful West Virginia!
Case Facts: Insured purchased a new car and sought to have his existing coverage apply to the new vehicle. The existing policy was unaffordable and the insured requested an agent’s assistance to procure less expensive coverage. Before this could happen, the policy expired and the insured was involved in a late night accident, resulting in a total loss to the vehicle. At the time of the accident, insured knew he did not have a policy in force.
The Court held . . .

a) The agent did not have an independent duty to ensure that the insured’s vehicle had coverage.

b) The agent told the insured not to drive at night without insurance, assuming the duty to advise.

c) By promising that he could procure a new insurance policy, the agent assumed a duty to advise.

d) Insured knew on the date of the accident that he did not have collision insurance, so there was no reliance on the agent’s representations.
d) Insured knew on the date of the accident that he did not have collision insurance, so there was no reliance on the agent’s representations. (*Parsley v. GMAC*, 280 S.E.2d 703 (W.Va. App. 1981)).

West Virginia is an order-taker state and does not impose an affirmative duty to advise. Agents must procure the requested insurance and may be held liable for a failure to procure what was promised or represented if the customer relied on that promise or representation.
Delaware – It’s good to be first
Case Facts: President of a company, because of a long family friendship, placed business insurance for company vehicles through an agent, requesting enough insurance to meet company’s needs. Insured believed agent would know the proper amount of coverage. Agent secured minimum limits of liability insurance on vehicles, and after an accident, coverage was insufficient.
The Court held . . .

- a) No duty to advise absent a special relationship, but general duty to advise about types of coverage available.

- b) Family friendship spanned a sufficient amount of time to create a special relationship.

- c) No circumstances alleged to create a special relationship. Customary duty to use reasonable care, skill and diligence observed.

- d) Delaware is a corporate-friendly state, so the company President prevailed.
c) No circumstances alleged to create a special relationship. Customary duty to use reasonable care, skill and diligence observed. (Sinex v. Wallis, 611 A.2d 31 (Del. 1991)).

Delaware recognizes an additional duty to advise when the circumstances support such a finding. Those circumstances can include an agent holding out as an expert or receiving additional compensation beyond usual usual commission for providing advice.
The Green Mountain State
Case Facts: Insured purchased a home and told longtime agent she would be renovating by doing “cosmetic” work. Agent recommended 80% insurance-to-value for replacement cost limit; insured agreed and policy was issued. Insured began substantial renovations and, soon after, the home was destroyed by fire. Insurer denied replacement cost as actual value of home while torn out during renovation was less than 80% of policy’s stated limit. Insured sued Agent.
The Court held . . .

• a) Duty is to use reasonable care to procure coverage requested by insured. Scope of renovations misstated by insured.

• b) Fire caused by spontaneous combustion of stain rags; proper action was against contractor, not against agent.

• c) Every relationship between agent and insured is “special” under Vermont law, resulting in judgment for insured.

• d) The insured and agent had a 12-year relationship, creating affirmative duty to advise.
a) Duty is to use reasonable care to procure coverage requested by insured. Scope of renovations misstated by insured. (*Booska v. Hubbard Ins. Agency*, 627 A.2d 333 (Vt. 1993)).

Vermont recognizes a duty to advise when a special relationship exists, but special relationships are difficult to establish in the state. Agent must use reasonable skill, care and diligence in procuring coverage.
Land of Lincoln
Case Facts: Insured liquor store had long relationship with insurance producer who sold policy indicating that insured was “covered for everything.” When injured employee made claim, insured learned workers compensation insurance was excluded. Insured brought action against insurance producer for breach of statutory duty.
The Court held . . .

• a) Common law duty controlled, so no breach of statutory duty could be sustained.

• b) Injury to store employees was foreseeable, so insurance producer had duty to offer coverage.

• c) Illinois statutory duty to use reasonable care in procuring coverage applies only to coverage requested by the insured.

• d) The Cubs made it to the World Series. Court canceled as liquor store ordered to stay open.
c) Illinois statutory duty to use reasonable care in procuring coverage applies only to coverage requested by the insured. (*Melrose Park Sundries, Inc. v Carlini*, 399 Ill. App. 915 (Ill. App. 2010)).

Illinois insurance producers have a statutory duty to use ordinary care to procure, renew, bind, or place coverage requested by the insured. 735 ILCS § 5/2-2201. But there is no fiduciary relationship and the duty does not extend to procuring coverage that the insured did not specifically request.
Last Stop – The Grand Canyon State
**Case Facts:** Insured alleged he requested comprehensive coverage for his auto body shop and relied on agent to recommend an appropriate policy. The agent quoted on an “apples-to-apples” basis, relying on a prior policy held by the insured. A subsequent employee theft loss was not covered by the policy. The insured’s expert opined that the agent violated the standard of care because the agent was aware that the insured’s employee had check-signing authority and might embezzle funds.
a) Agent entitled to summary judgment as agents owe a duty only to procure the coverage requested by the customer.
b) Summary judgment inappropriate, as expert testimony presented a fact question on the standard of care.
c) Summary judgment entered for customer as agent violated the standard of care.
d) Plaintiff’s expert testimony was insufficient to establish the standard of care under *Daubert*. 
b) Summary judgment inappropriate, as agent’s conduct presented a fact question on the standard of care. *(Southwest Auto Painting & Body Repair v. Binsfeld, 904 P.2d 1268 (Ariz. App. 1995)).*

Arizona is a **professional standard state**, generally requiring insurance agents to conform to a standard established by expert testimony. Minimally, insurance agents must advise customers about reasonably applicable types and limits of insurance, even when advice or explanation is not sought.
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