YOU WANT MORE THAN 'FULL COVERAGE'

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Robert G. Devetski
Partner

Policyholderinsurancepolicyfolderimage A recent Indiana Supreme Court case addressed the question of what it means to ask an insurance agent for “full coverage.” At renewal time, policyholders often tell their insurance agent that they want “full coverage.” That term means different things to different people. The policyholder may be thinking of its property insurance limits in case a fire destroys the building and contents. They do not want to be underinsured--they want “full coverage.” At the same time, the agent may be thinking in terms of the types of coverage needed to fully insure the policyholder’s business (employment practices, business interruption, environmental, cyber, CGL). The agent may think in terms of the risks the policyholder needs to be insured against so they have “full coverage.” When there is no coverage for a claim or loss because the policyholder did not purchase the right type of coverage, or when a loss is not fully covered because the policyholder did not purchase adequate coverage, the policyholder who asked for “full coverage” may blame the agent. But whether that blame is legally justified often depends on the nature of the relationship between policyholder and agent. An insurance agent may have a *duty to procure* insurance and a separate *duty to advise* the policyholder. That duty to advise only arises when there is a “special relationship” between policyholder and agent. The existence of a special relationship depends on the facts. In March 2015, the Indiana Supreme Court stated the factors considered under Indiana law in determining whether such a special relationship exists. In that decision, *Indiana Restorative Dentistry, P.C. v. Laven Insurance Agency, Inc.*, No. 49S05-1407-PL-491, __N.E.3d __ (Ind., March 12, 2015), the court said that “all special relationships are long-term, but not all long-term relationships are special.” The court pointed out that the duty to advise arises when the policyholder’s relationship is one of trust and intimacy with the agent. If a special relationship existed, the agent may have a duty to advise the policyholder. The factors mentioned in the decision are whether the agent (1) exercises broad discretion to service the policyholder’s needs, (2) counsels the policyholder concerning specialized insurance coverage, (3) holds himself out as a highly skilled insurance expert, and (4) received compensation above the customary premium paid for his expertise. But the Indiana Supreme Court also pointed out that in a search of Indiana appellate decisions, it had only found one instance in the past thirty years where such a special relationship had been found as a matter of law. The vast majority of cases found no duty to advise, as a matter of law, because the parties’ relationship was a typical agent/insured relationship. The Indiana Supreme Court explained that agents may be liable for breach of contract *or* for negligence in the performance of their duties to procure insurance as

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requested by the policyholder. A contract to procure insurance requires a meeting of minds on all critical elements: (1) the subject of the insurance; (2) the risk insured against; (3) the amount of coverage; (4) the duration of the risk; and (5) the amount of the premium. A contract to procure insurance can be implied based upon a policyholder's past dealings with his agent. But there is no contract unless the agent has sufficiently definite directions from the policyholder to enable the agent to procure the policy requested. An insurance agent can be held liable when a claim or loss reveals that the policyholder's coverage is not what he requested. However, under Indiana law, requesting "full coverage" may not be sufficient to support certain claims against an insurance agent if the right insurance was not provided.