

Recent Trial Win Raises Interesting Issues On Relationship Between Insurance Agent And Policyholder

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Disclaimer: Barnes & Thornburg represented the policyholder in this case and the policyholder has provided their consent for this case summary. NOTE THAT ANY CASE DECISIONS, COURT OPINIONS, RULINGS, AND/OR RESULTS DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH CASE.

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Can an insurance agent's statement and representations bind an insurance company? A recent Minnesota court said, "yes." In January 2015, Barnes & Thornburg client Prospect Foundry, LLC, was sued in Hennepin County District Court for breach of contract by its workers' compensation insurer, Western National Mutual Insurance Company. Western National sought \$245,000 in unpaid premiums. Prospect disputed the amount owed based upon dividends Prospect claimed it was owed under an earlier policy. Prospect argued that the dividends were apparently not paid because Western National unfairly failed to close claims and reduce reserves on the enumerated claim close date. Two months prior to the claim close date, Prospect had discussions with the insurance agent and was assured that certain claims would be closed. When they were not closed (until three days later) and the premium was not forthcoming, Prospect raised the issue of the agent's representations and whether they should be binding on the insurance carrier. Prospect cited Minnesota Statute § 60K.49, Subd. 1 that states in relevant part: Subdivision 1. **Agent of insurer.** A person performing **acts** requiring a producer license under this chapter is at all times the agent of the insurer and not the insured. (Emphasis added).

The "acts" referred to in Section 60K.49, are enumerated in Minnesota Statute 60K.32 that reads: A person shall not sell, solicit, or **negotiate** insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority under sections 60K.30 or 60K.56. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier. (Emphasis added)

Finally, "negotiate" is specifically defined in the statutes as well. Minnesota Statute 60K.31, Subd. 12, reads: Subd. 12 **Negotiate.** "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in that act either sells insurance or obtains insurance from insurer for purchasers.

This statute on its face eliminates the distinction between broker (allegedly

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the agent for the policyholder) and agent (agent for the insurer); the Minnesota Supreme Court also addressed this fact in *Graff v. Robert M. Swendra Agency, Inc.*, 800 N.W.2d 112, 118 n.5 (Minn. 2011) (“This distinction [between agent and broker], however, appears to have been superseded by statute.”). Based on this law, the Hennepin County District Court held: Based upon the interpretation of the statute language in *Graff* and this Court’s review of Minnesota Statute Chapter 60K, there is no provision differentiating an insurance agent from an insurance broker.

After a four-day jury trial, in which testimony was provided by Prospect Foundry’s representative, the agent who allegedly made the representations, and an expert witness addressing agency, the jury found no breach by Prospect and awarded Prospect \$53,300 in compensatory damages for breach of the duty of good faith and fair dealing implied in all insurance contracts. The moral of the case: Policyholders are probably right in relying on representations made to them by the insurance agents, but are encouraged to get those representations in writing or send a written confirmation of the their understanding of the communication so that it cannot be later disputed.