

**INSURANCE AGENT LIABILITY:
ALLEGATIONS OF NEGLIGENCE AGAINST INSURANCE AGENTS**

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Evolution of Insurance Agent Tort Liability in Iowa

Early Iowa cases applied agency law principles to the problem of insurance agent liability.

Insurance agent “owes a duty to his principal to exercise reasonable skill, care, and diligence in effecting the insurance.” *Wolfswinkel v. Gesink*, 180 N.W. 2d 452, 456 (Iowa 1970).

“We hold the defendant owed plaintiff that duty which an agent ordinarily owes his principal – the duty to use reasonable care, diligence and judgment.” *Collegiate Mfg. Co. v. McDowell’s Agency, Inc.*, 200 N.W.2d 854, 857 (Iowa 1972).

More recently, however, the professional negligence standard has been applied in cases against insurance agents.

“The burden rested upon [plaintiff] to prove ‘the insurance agent’s breach’ of the professional negligence standard – ‘the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities’.” *Humiston Grain Co. v. Rowley Interstate Transportation Co., Inc.*, 512 N.W.2d 573 (Iowa 1994).

Early Iowa cases covering insurance agent liability involved claims of failure to procure insurance. *See Wolfswinkel v. Gesink*, 180 N.W.2d 452, 456 (Iowa 1970). These cases invited claims of breach of contract or negligent default in the performance of a duty imposed by contract. *Id.*

Claims now include allegations of “error or omissions extend[ing] beyond the agent’s mere failure to procure coverage requested and paid for.” *See Humiston Grain Co. v. Rowley Interstate Transportation Co., Inc.*, 512 N.W.2d 573, 576 (Iowa 1994) (unsuccessfully alleging an affirmative duty to assess coverage gaps).

Challenges to Proving Insurance Agent Negligence.

Burden of Proof

The burden is on the plaintiff to prove defendant's breach of the standard of care. *Id.* at 575 (citing *Devine v. Wilson*, 373 N.W.2d 155, 157 (Iowa App. 1985)).

Expert Testimony

“Unless a professional’s lack of care is so obvious as to be within the comprehension of a layperson, the standard of care and its breach must ordinarily be established through expert testimony.” *Id.* (citing *Perin v. Hayne*, 210 N.W.2d 609, 613 (Iowa 1973); *Devine*, 373 N.W.2d at 157).

If the allegation is merely failure to procure the coverage requested, no expert testimony is required. *Id.* at 576

“[C]ases involving the agent’s alleged failure to discern coverage gaps or risks of exposure in more complex business transactions ... having required expert testimony to establish the applicable standard of care.” *Id.* (citing *Atwater Creamery Co. v. Western Nat’l Mut. Ins. Co.*, 366 N.W.2d 271, 279 (Minn. 1985); *Todd v. Malafronte*, 3 Conn. App. 16, 19, 484 A.2d 463, 466 (1984)).

“Where the circumstances demand expert testimony, the agent’s own admissions may furnish the necessary proof.” *Id.*

In *Todd*, no expert testimony was procured by plaintiff, and therefore the insurance agent argued on appeal that the verdict should be reversed. The decision of the trial court was affirmed, however, because the insurance agent had testified as to his standard of care. 3 Conn. App. at 19, 484 A.2d at 466.

Reasonable Care

“An agent owes his principal the use of such skill as is required to accomplish the object of his employment. If he fails to exercise reasonable care, diligence, and judgment in this task, he is liable to his principal for any loss or damage occasioned

thereby.” *Collegiate Mfg. Co. v. McDowell’s Agency, Inc., et al.*, 200 N.W.2d 854, 857 (Iowa 1972).

Scope of Duty

“This general rule may be altered, either to limit or enlarge the ordinary duties, by agreement of the parties.” *Id.*

Iowa cases typically limit the insurance agent’s duty to “obeying his instructions in the performance of his agreement or contract of agency ... Generally speaking, if an agent accepts an order to insure, he must exercise such reasonable skill and ordinary diligence as may fairly be expected from a person in his profession or situation, in doing what is necessary to effect a policy.” *Smith v. State Farm Mutual Auto. Ins. Co.*, 248 N.W.2d 903, 906 (Iowa 1976).

An insurance agent’s duties are potentially different from every client and are seemingly assessed under a contractual standard regarding bargained for duties.

When a client requests a particular policy or coverage amount, the insurance agent’s duty is to use such reasonable skill as is required to procure that insurance.

The principal-agent relationship cannot be expanded unilaterally; there must be an agreement. *Collegiate*, 200 N.W.2d at 858.

Reliance on the agent, great confidence in the agent, and a history of frequently following the agent’s advice is insufficient to expand the agent’s duty beyond the ordinary principal-agent relationship duty. *Id.*

Iowa Case Law

In *Collegiate*, plaintiff relied heavily on defendant agent’s “expertise to handle all the insurance affairs of the company and placed complete confidence” in him. *Id.* at 856.

Agent advised plaintiff it should “protect itself against fire loss by an inventory reporting policy”, the maximum liability limit of which was less than the amount of loss ultimately suffered. *Id.*

Agent alleged contributory negligence due to plaintiff’s failure to inform itself of the coverage gap between the maximum limit of liability and the amount it stood to lose.

Court approved jury instruction placing “upon plaintiff the duty to know the quantity and value of its property and in general the terms and conditions of the insurance covering it.” *Id.* at 859.

Burden was not on agent to decide both the type and amount of insurance to provide because no agreement was made between plaintiff and agent expanding his duties to that extent. *Id.*

Likewise, in *Humiston*, which involved professional negligence on top of ordinary principal-agent relationship, the Iowa Supreme Court refused to place “an affirmative duty on [the insurance agent’s part] to assess coverage gaps where no request for such an examination [was] made.” 512 N.W.2d at 576.

Furthermore, in *Humiston*, the Court was unable to establish the standard of care through the insurance agent’s testimony as the Connecticut court was able to do so in *Todd*, because the insurance agent “repeatedly disclaimed any duty to determine what exposures existed for Himiston or any other client.... He testified that his clients bear the responsibility of knowing their own insurance needs, insisting that his duty is limited to filling their requests.” *Id.*

Reversing, the Court stated the “district court’s tacit assumption that this duty had been delegated to [the insurance agent] rests on sheer speculation” and cites *Collegiate* for the proposition that it is plaintiff’s duty to know his/her insurance needs “in absence of evidence to the contrary.” *Id.*

The implication is that had the insurance agent agreed to determine the amount of insurance necessary to protect plaintiff’s property, he could have been liable. There being no duty on the agent’s part to calculate the potential extent of loss and recommend a coverage amount, the agent could not have been negligent.

The court agreed “there *could* have been delegated to [insurance agent] the burden of deciding for plaintiff both the type and amount of insurance to be provided; but

there is no evidence to sustain such a contention.” *Collegiate*, 200 N.W.2d at 859. (Emphasis in original.)

Other Jurisdictions

Other jurisdictions have seen plaintiffs use expert testimony to broaden the duties owed by insurance agents.

In *Todd v. Malafronte*, the insurance agent testified that it is the responsibility of the insurance agent to make sure of the fact that the potential insured has the proper coverage.” 3 Conn. App. at 19, 484 A.2d at 466.

In *Dimeo v. Burns*, the court affirmed the trial court’s jury instructions stating “that an agent has the duties to advise the client about the kind and extent of desired coverage and to choose the appropriate insurance for the client. The court told the jury that the client ordinarily looks to his agent and relied on the agent’s expertise in placing his insurance problems in the agent’s hands.” 6 Conn. App. 241, 504 A.2d 557 (1986).

Thus, Connecticut, a jurisdiction cited frequently by Iowa courts in these cases, is far more plaintiff-friendly than Iowa regarding insurance coverage gap cases. See *Collegiate, supra* (refusing to delegate this duty to insurance agent absent “evidence to sustain such a contention”).

Contract Claims and the Doctrine of Reasonable Expectations

“Under this doctrine, the reasonable expectations of the insured may not be frustrated even though a ‘painstaking study’ of the policy would negate those expectations.” *Shelter Mutual Ins. Co. v. Davis*, 753 N.W.2d 18 (Iowa Ct. App. 2008) (citing *Rodman v. State Farm Mutual Auto. Ins. Co.*, 208 N.W.2d 903, 906 (Iowa 1973)).

Insurance policies are “contracts of adhesion between parties not equally situated The company is expert in its field and its varied and complex instruments are prepared by it unilaterally whereas the insured or prospective insured is a layman unversed in insurance provisions and practices. [The insured] justifiably places heavy reliance on the knowledge and good faith of the company and its representatives and they, in turn, are under correspondingly heavy responsibility to him.” *Id.* (citing *Rodman*, 208 N.W.2d at 905-6 (citations omitted)).

In order for the reasonable expectation doctrine to apply, the insured must satisfy, as prerequisite, that either “the policy is such that ‘an ordinary layperson would misunderstand its coverage’ or that there were ‘circumstances attributable to the insurer that fostered coverage expectations.’” *Id.* (citing *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 357 (Iowa 1995)).

Such circumstances include “the underlying negotiations between the parties.” *Id.* (citing *Clark-Peterson Co. v. Indep. Ins. Ass’n., Ltd.*, 492 N.W.2d 674, 677 (Iowa 1992)).

Courts review such negotiations “with a view to the liability for which insurance coverage was sought.” *Id.*

An “insured can avoid an exclusion of coverage if that exclusion ‘(1) is bizarre or oppressive, (2) eviscerates a term to which the parties have explicitly agreed, or (3) eliminates the dominant purpose of the policy.’” *Id.* (citing *Benavides*, 539 N.W.2d at 356).

In *Shelter Mutual*, the Davises requested from their insurance agent “full liability coverage on everything”, which included “their Ankeny home, their [Lake Panorama] vacation home, their vehicles, their watercraft, and each and every piece of ‘recreational equipment’.” *Id.* at *1.

The insurance agent “sold them policies for homeowners’ insurance, automobile liability, and watercraft liability. [The agent] also sold them a \$1 million umbrella policy to provide excess personal liability coverage.” *Id.* at *2.

After purchasing those policies, the Davises bought two ATVs and requested and were told they would have “full coverage.” *Id.*

A friend of one of the Davis sons crashed the ATV, which “came to rest in a ‘community area’ of the local homeowner association” at Lake Panorama.

Shelter Mutual denied coverage for the resulting lawsuit against the Davises, asserting that the ATV’s were insured under the homeowners’ policy (rather than the automobile policy) which included a provision “excluding coverage for recreational vehicle accidents that occurred away from the premises insured by the homeowners’ policy. *Id.* at *3.

The district court ruled that no reasonable “expectations of coverage could have been created concerning the ATVs because the Davises did not own the ATVs when the Shelter policies were purchased” and “the doctrine applies only to representations made by the insurer at the time of policy negotiation and issuance.” *Id.* at *8.

The Court of Appeals reversed, however, noting that there may be “other circumstances attributable to the insurer which could cause expectations.” *Id.* at *8-9 (citing *Rodman*, 208 N.W.2d at 908).

The Court found that the conversation regarding “full coverage” on the two ATVs constituted such “other circumstances attributable to the insurer.”

Because the off-premises exclusion of the homeowners’ policy “eliminated the dominant purpose for [the] policy”, the court voided it. *Id.* at *9, 16.