



The Professional Lines **ALERT**

Minnesota Recognizes Claim Against Insurance Agent for Negligent Failure to Procure Insurance

November 7, 2011

Plaintiff insured claimed that he instructed his insurance agent to obtain \$1 million in UIM coverage in an umbrella policy he was purchasing. The umbrella policy issued provided only \$100,000 in UIM coverage. When the insured was injured by a UIM driver, the agent denied having been directed to obtain the extra coverage.

Questions Before the Court

Issue 1: Does Minnesota recognize a claim against an insurance agent for negligent failure to procure insurance coverage requested by the insured?

In the matter of first impression, the Minnesota Supreme Court held that the insurance agent could be held independently liable for negligent failure to procure insurance coverage requested by the insured. The Court cited to prior decisions holding that an agent has a duty to exercise the standard of skill and care that a reasonably prudent person engaged in the insurance business would use under similar circumstances and that this rule was consistent with the Restatement (Third) of Agency, which provides that an agent is generally subject to liability to a third party harmed by the agent's tortious conduct even when the agent's conduct may also subject the principal to liability.

Issue 2: Does a release of the insurance carrier operate to release the claim against the insurance agent for negligence in procuring insurance?

The Court denied that the release entered into between the insured and the insurance carrier also released insured's claims against the agent, finding that the insured's two claims were separate and distinct, one being for breach of contract and the other for negligence in procuring insurance. The agent's denial confirmed the separate nature of the negligence claim. The Court also rejected the agent's claim that both claims were released based on "circular indemnity" on grounds that the carrier did not have a contractual obligation to indemnify the agent for the agent's own negligence.

What the Court's Decision Means for Practitioners

This decision appears to be part of a trend where courts have recognized an independent claim against an insurance agent for negligent failure to procure insurance and held that the insured's release of a contract claim against the carrier for nonpayment of benefits does not operate to release the separate claim against the insurance agency for negligent failure to procure.



[Graff v. Robert W. Swendra Agency, Inc., 800 N.W.2d 112 \(Minn. Sup. Ct. July 13, 2011\)](#)

For further information, please contact [Donald A. O'Brien](#) or your regular [Hinshaw attorney](#).

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