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2018 U.S. 50 State Insurance Agent E&O and Standard of Care Update and Overview

50 State Edition

Brownson Norby, PLLC's annual summary of the United States 50 State Insurance Agent E&O and Standard of Care – Updated for 2018 by Aaron M. Simon

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2018 United States 50 State Insurance Agent E&O and Standard of Care Update and Overview By Aaron Simon[1]

NOTE:** ***This is not intended as legal advice, but rather a general guide and overview. Case law, authorities, and precedent in any given jurisdiction often can change – please contact an attorney directly to discuss the specifics of any applicable jurisdiction's case law, authorities, and precedent.

To begin with, most jurisdictions impose an "order taker standard" on insurance agents. *See Wilson Works, Inc. v. Great Am. Ins. Grp.*, No. 1:11-CV-85, 2012 WL 12960778, at *3 (N.D.W. Va. June 28, 2012):

> A majority of courts that have considered the issue have held that an insurance agent owes clients a duty of reasonable care and diligence, but absent a special relationship, that duty does not include an affirmative, continuing obligation to inform or advise an insured regarding the availability or sufficiency of insurance coverage. *See, e.g., Peter v. Schumacher Enterprises, Inc.*, 22 P.3d 481, 482-83, 486 (Alaska 2001); *Szelenyi v. Morse, Payson & Noyes Ins.*, 594 A.2d 1092, 1094 (Me. 1991); *Sadler v. Loomis*, 139 Md. Ct. App. 374, 776 A.2d 25, 46 (2001); *Robinson v. Charles A. Flynn Ins. Agency*, 39 Mass. Ct. App. 902, 653 N.E.2d 207, 207-08 (1995); *Harts v. Farmers Ins. Exchange*, 461 Mich. 1, 597 N.W.2d 47, 48 (1999); *Murphy v. Kuhn*, 90 N.Y.2d 266, 660 N.Y.S.2d 371, 682 N.E.2d 972, 974 (1997); *Nelson v. Davidson*, 155 Wis.2d 674, 456 N.W.2d 343, 344 (1990).

There is "no duty to give advice is created simply because the insurance intermediary becomes a person's agent. This applies both to advice about what policies should be purchased as well as advice about what coverage is contained in an insured's existing policy." Robert H. Jerry, II, Understanding Insurance Law § 35(f)(2)(ii), at 212 (2d ed.1996). Insurance agents or brokers are not personal financial counselors and risk managers, approaching guarantor status, and it is well settled that agents have no continuing duty to advise, guide, or direct a client to obtain additional coverage. *Murphy v. Kuhn*, 90 N.Y.2d 266, 660 N.Y.S.2d 371, 682 N.E.2d 972, 976 (1997).

One should also keep in mind that even in jurisdictions where the "order taker standard" is generally applied, there is also often a carve out for special circumstances giving rise to a special relationship. If special circumstances exist that give rise to a special relationship, then courts will apply a heightened duty to advise standard. However, even in jurisdictions that have the carve out for special circumstances/special relationship, it is rarely applied – i.e. the specific facts of most cases will not give rise to special circumstances and a special relationship heightened duty.

In addition, this review focuses on case law. Most jurisdictions also have regulations, statutes, and other laws that also apply to the actions of insurance agents and brokers.

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Alabama – Order Taker Standard

"When an insurance agent or broker, with a view to compensation, undertakes to procure insurance for a client and unjustifiably or negligently fails to do so, he becomes liable for any damage resulting therefrom." *See Lewis v. Roberts*, 630 So. 2d 355, 357 (Ala. 1993); *see also Crump v. Geer Brothers, Inc.*, 336 So. 2d 1091, 1093 (Ala. 1976); and *Maloof v. John Hancock Life Ins. Co.*, 60 So. 3d 263, 272 (Ala. 2010).

Once the parties have come to an agreement on the procurement of insurance, the agent or broker must exercise reasonable skill, care, and diligence in effecting coverage. *Montz v. Mead & Charles, Inc.*, 557 So.2d 1 (Ala.1987).

See also Maloof v. John Hancock Life Ins. Co., 60 So. 3d 263, 274 (Ala. 2010):

> This testimony indicates that the Maloofs certainly did not view their relationship with Glasgow, though cordial and long-standing, as anything special or outside the typical salesperson-customer relationship. Combined with the facts in the record indicating that John is a well-educated professional and an experienced investor, we agree with the conclusion of the trial court that there was "no evidence that would justify the imposition of a fiduciary duty owed to [the Maloofs] by [John Hancock and Glasgow]" and that the summary judgment was accordingly proper.

Alaska – Order Taker Standard

See Peter v. Schumacher Enterprises, Inc., 22 P.3d 481, 485–86 (Alaska 2001):

> This court has previously held that an insurance agent owes a duty to the insured to exercise reasonable care, skill, and diligence in procuring insurance. Insurance agents have a well-established common-law duty "to obtain requested coverage for their clients within a reasonable time or inform the client of the inability to do so." Because the prospective insured typically knows the extent of her personal assets and her ability to pay better than the insurance agent, however, it is generally the responsibility of the insured to advise the agent of the insurance that she actually wants, including policy limits. Ordinarily, then, an insurance agent fulfills her duty to the insured by providing requested coverage, and has no duty to advise a client to obtain different or additional coverage.

See also Christianson v Conrad Houston Ins., 318 P3d 390 (Alaska 2014); *Preblich v Zorea*, 996 P.2d 730, 734 (Alaska 2000); *Nome Commercial Co. v. Nat'l Bank of Alaska*, 948 P.2d 443, 453 (Alaska 1997); *Johnson & Higgins of Alaska, Inc. v. Blomfield*, 907 P.2d 1371 (Alaska 1995); *Chizmar v. Mackie*, 896 P.2d 196, 203 (Alaska 1995); *Jefferson v. Alaska 100 Ins., Inc.*, 717 P.2d 360, 364 (Alaska 1986); and *Clary Ins. Agency v. Doyle*, 620 P.2d 194, 201 (Alaska 1980).

Arizona – Case by Case Duty/No Standard Duty

See BNCCORP, Inc. v. HUB Int'l Ltd., 243 Ariz. 1, 400 P.3d 157, 165 (Ct. App. 2017), review denied (Mar. 20, 2018) (emphasis added):

> As the trial court indicates, the default rule in Arizona is that a broker who agrees to obtain insurance for a client owes a duty to the client "to exercise reasonable care, skill and diligence" in so doing. *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 140 Ariz. 383, 397, 682 P.2d 388, 402 (1984); *see also Webb*, 217 Ariz. at 367, ¶ 20, 174 P.3d at 279 (citations omitted) (acknowledging the *Darner* standard); *Sw. Auto*, 183 Ariz. at 448, 904 P.2d at 1272 (reaffirming the *Darner* standard). *Darner* also suggests that this **standard of care is not universally applicable**, and that an applicable standard should be determined on a case-by-case basis, and is an evidentiary determination that may require proof in the form of expert testimony at trial. 140 Ariz. at 397–98 & n.14, 682 P.2d at 402–03 & n.14. Thus, we must examine the record in this case to determine whether the relationship between BNC and HUB commanded the tailored standard the trial court imposed, or instead whether some different and heightened standard of care is applicable.

In Arizona an expert can establish that the normal standard of care requires an insurance agent to affirmatively inform and advise the insurance agent's insurance customer. *See SW Auto Painting v. Binsfeld*, 183 Ariz. 444, 904 P.2d 1268, 1271-72 (1995)

See also Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co., 140 Ariz. 383, 397, 682 P.2d 388, 402 (1984).

Arkansas – Order Taker Standard

See Buelow v. Madlock, 90 Ark. App. 466, 471, 206 S.W.3d 890, 893 (2005):

> Our supreme court has ruled that an insurance agent has no duty to advise or inform an insured as to insurance coverages; instead, our law places the responsibility on the policy holder to educate himself concerning matters of insurance. *Scott–Huff Ins. Agency v. Sandusky*, 318 Ark. 613, 887 S.W.2d 516 (1994); *Howell v. Bullock*, 297 Ark. 552, 764 S.W.2d 422 (1989); *Stokes v. Harrell*, 289 Ark. 179, 711 S.W.2d 755 (1986). The court adopted this position in *Stokes v. Harrell*, supra, and in doing so, it recognized an exception where there is a special relationship between the agent and the insured, as evidenced by an established and ongoing relationship over a period of time, with the agent being actively involved in the client's business affairs and regularly giving advice and assistance in maintaining proper coverage for the client.

See also Scott-Huff Ins. Agency v. Sandusky, 318 Ark. 613, 887 S.W.2d 516 (1994); *Howell v. Bullock*, 297 Ark. 552, 764 S.W.2d 422 (1989); *Stokes v. Harrell*, 289 Ark. 179, 711 S.W.2d 755 (1986); and *Williams-Berryman Ins. Co. v. Morphis*, 249 Ark. 786, 461 S.W.2d 577 (1971).

California – Order Taker Standard

See Pac. Rim Mech. Contractors, Inc. v. Aon Risk Ins. Servs. W., Inc., 203 Cal. App. 4th 1278, 1283, 138 Cal. Rptr. 3d 294, 297–98 (2012):

> Insurance brokers owe a limited duty to their clients, which is only "to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured." (*Jones v. Grewe* (1987) 189 Cal.App.3d 950, 954, 234 Cal.Rptr. 717, italics added; *see Kotlar, supra*, 83 Cal.App.4th at p. 1123, 100 Cal.Rptr.2d 246.) Accordingly, an insurance broker does not breach its duty to clients to procure the requested insurance policy unless "(a) the [broker] misrepresents the nature, extent or scope of the coverage being offered or provided ... , (b) there is a request or inquiry by the insured for a particular type or extent of coverage ... , or (c) the [broker] assumes an additional duty by either express agreement or by 'holding himself out' as having expertise in a given field of insurance being sought by the insured." (*Fitzpatrick v. Hayes* (1997) 57 Cal.App.4th 916, 927, 67 Cal.Rptr.2d 445.)
>
> California law is well settled as to this limited duty on the part of insurance brokers. (*Hydro–Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Associates, Inc.* (2004) 115 Cal.App.4th 1145, 1153, 10 Cal.Rptr.3d 582 [insurance brokers owe a duty to procure the requested insurance]; *Nowlon v. Koram Ins. Center, Inc.* (1991) 1 Cal.App.4th 1437, 1447, 2 Cal.Rptr.2d 683 ["the duty of the broker ... is incurred in the procurement or issuance of an insurance policy ..."]; *see also Wilson v. All Service Ins. Corp.* (1979) 91 Cal.App.3d 793, 798, 153 Cal.Rptr. 121 [holding that a broker has no duty to investigate the financial condition of insurer authorized to conduct business when policy issued].)

See also Williams v. Hilb, Rogal & Hobbs Ins. Servs. of California, Inc., 177 Cal. App. 4th 624, 635, 98 Cal. Rptr. 3d 910, 919 (2009):

> We begin with a few foundational principles. *Fitzpatrick*, supra, 57 Cal.App.4th 916, 67 Cal.Rptr.2d 445 summarizes the general rule on insurance agent negligence, which was articulated by Justice Kennard in *Jones v. Grewe* (1987) 189 Cal.App.3d 950, 954–955, 234 Cal.Rptr. 717 (*Jones*). "It is that, as a general proposition, an insurance agent does not have a duty to volunteer to an insured that the latter should procure additional or different insurance coverage." (*Fitzpatrick*, at p. 927, 67 Cal.Rptr.2d 445, fn. omitted.) Thus, ordinarily the insurance agent's duty is "to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured." (*Jones*, at p. 954, 234 Cal.Rptr. 717.)

See also San Diego Assemblers, Inc. v. Work Comp for Less Ins. Servs., Inc., 220 Cal. App. 4th 1363, 1369, 163 Cal. Rptr. 3d 621, 625 (2013).

See also Jones v. Grewe, 189 Cal.App.3d 950, 234 Cal.Rptr. 717, 721 (1987) (general duty of reasonable care which an insurance agent owes his client does not include the obligation to procure a policy affording the client complete protection, but insured has responsibility to advise agent of the insurance he or she wants, including the limits of the policy to be issued);

Colorado – Order Taker Standard

See Kaercher v. Sater, 155 P.3d 437, 441 (Colo. App. 2006):

> Colorado follows the general rule that insurance agents have a duty to act with reasonable care toward their insureds, but, absent a special relationship between the insured and the insurer's agent, that agent has no affirmative duty to advise or warn his or her customer of provisions contained in an insurance policy. *See Estate of Hill v. Allstate Ins. Co.*, 354 F.Supp.2d 1192, 1197 (D.Colo.2004) (quoting 4 Couch on Insurance § 55:5 (3d ed.): "The general duty of the insurer's agent to the insured is to refrain from affirmative fraud, not to watch out for all rights of the insured and inform the latter of them.")

See also Golting v. Hartford Accident and Indemnity Co, 43 Colo. App. 337, 603 P.2d 972 (1979); *Apodaca v. Allstate Insurance Company*, 232 P.3d 253 (Colo.App. 2009); *Golden Rule Insurance Corporation v. Greenfield*, 786 P.2d 914 (D. Colo. 1992); and *Taco Bell, Inc. v. Lannon*, 744 P.2d 43, 46 (Colo. 1987).

Connecticut – Heightened Duty to Advise of "kind and extent of desired coverage"

See Dimeo v. Burns, Brooks & McNeil, Inc., 6 Conn.App. 241, 504 A.2d 557, 559 (1986) (emphasis added).

> An insurance agent has the duty to **exercise reasonable skill, care and diligence to see that his client has proper coverage**. *Todd v. Malafronte*, 3 Conn.App. 16, 22, 484 A.2d 463 (1984). " 'Where he undertakes to procure a policy affording protection against a designated risk, the law imposes upon him an obligation to perform with reasonable care the duty he has assumed....' " (Emphasis in original.) *Id*. The court instructed the jury that selling insurance is a specialized field with specialized knowledge and experience, and 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 relies on the agent's expertise in placing his insurance problems in the agent's hands. The court instructed the jury that, if the agent performs these duties negligently, he is liable therefor, just as other professionals are. The court also instructed that the standard of care is not that of ordinary negligence but the knowledge, skill and diligence of insurance agents in Connecticut in July, 1980, in similar cases. The court further instructed the jury, on the basis of the expert testimony produced in the case through Reynolds and Ellen, that an agent has the duty to explain uninsured motorist coverage, to explain the consequences of not having a sufficient amount of such coverage, to recommend the proper amount, and to attempt to procure that amount and offer it to the client.

See also Todd v. Malafronte, 3 Conn. App. 16, 19–20, 484 A.2d 463, 466 (1984):

> Insofar as the sale of insurance requires specialized knowledge, we agree that this case differs from the ordinary negligence action since matters within that specialized body of knowledge are crucial to the determination of the issues raised. Our review of the testimony adduced at trial, however, leads us to conclude that the requirements of proper

> care applicable to insurance agents were adequately established for the guidance of the jury. The transcript reveals that the defendant Linardos testified that it is the responsibility of the insurance agent to make sure of the fact that the potential insured has the proper coverage. This testimony, while sparse, was sufficient to amount to an opinion by one with special knowledge of the sale of insurance on the standard of care to which an insurance agent is held.

However, a recent unpublished case would suggest that only the order taker standard is applied. *See Preston v. Chartkoff*, No. CV0020071112S, 2004 WL 304323, at *6 (Conn. Super. Ct. Jan. 30, 2004): "Generally speaking, the duty imposed on an insurance broker to procure insurance, under either tort or contract law, simply requires the broker to act reasonably and without delay to try to obtain the requested coverage, but the broker cannot be held liable for the failure to obtain coverage as long as the client is informed of that fact."

See also Byrd v. Ortiz, 136 Conn. App. 246, 44 A.3d 208 (2012); *Ursini v. Goldman*, 118 Conn. 554, 173 A. 789, 790 (Conn. 1934).

Delaware – Order Taker Standard

See Sinex v. Wallis, 611 A.2d 31, 33 (Del.Super.Ct.1991) (an insurance agent assumes no duty to advise the insured on specific insurance matters merely because of the agency relationship):

> Ordinarily, an insurance agent assumes only those duties normally found in an agency relationship. This includes the obligation to use reasonable care, diligence and judgment in procuring the insurance requested by the insured. *Jones v. Grewe*, 189 Cal.App.3d 950, 234 Cal.Rptr. 717 (1987); 3 Couch on Insurance. 2d.Ed. § 25:37. The agent assumes no duty to advise the insured on specific insurance matters merely because of the agency relationship. 16A Appleman, Insurance Law and Practice, § 8836 at 64-66.

See also Blanchfield v. State Farm Mut. Auto. Ins. Co., 511 A.2d 1044 (Del. 1986):

> Although this responsibility includes promptly procuring a policy that effectually covers the property of the insured, in the normal insurer-insured relationship there is no general obligation for an insurance company or its agent to review the insured's risks and recommend coverages to adequately protect the changing needs of the insured. See Sandbulte v. Farm Bureau Mutual Insurance Co., Iowa Supr., 343 N.W.2d 457 (1984); Smith v. Millers Mutual Insurance Co., La. App., 419 So. 2d 59, writ denied 422 So. 2d 155 (1982).

See also Polly Drummond Thriftway, Inc. v. W.S. Borden Co., 95 F.Supp.2d 212 (D. Del. 2000).

Florida – Order Taker Plus – Sometimes Heightened Duty to Advise Included

See Adams v. Aetna Cas. & Sur. Co., 574 So. 2d 1142, 1155 (Fla. Dist. Ct. App. 1991):

> It is settled law that an insurance agent "is required to use reasonable skill and diligence, and liability may result from a negligent failure to obtain coverage which is specifically requested or clearly warranted by the insured's expressed needs." *Warehouse Foods, Inc. v. Corporate Risk Management Services, Inc*., 530 So.2d 422 (Fla. 1st DCA 1988). This general duty requires the agent to exercise due care in correctly advising the insured of the existence and availability of particular insurance, including the availability and desirability of obtaining higher limits, depending on the scope of the agents undertaking. *Seascape of Hickory Point Condominium Association v. Associated Insurances Services, Inc.*, 443 So.2d 488 (Fla. 2d DCA 1984); *Woodham v. Moore*, 428 So.2d 280 (Fla. 4th DCA 1983); *Sheridan v. Greenberg*, 391 So.2d 234 (Fla. 3d DCA 1981). The trial court correctly determined that Bacon was under a duty of care to Mr. Adams in this case based on the evidence of their relationship and the scope of Bacon's undertaking.

See also Kendall S. Med. Ctr., Inc. v. Consol. Ins. Nation, Inc., 219 So. 3d 185, 189 (Fla. Dist. Ct. App. 2017) (duty to advise included in general duty to procure) ("In short, Kendall South alleges, albeit somewhat inartfully, that liability arises here from the agent's negligent failure to advise Kendall South at the August 10, 2011 meeting that the procured policy was inadequate to address Kendall South's expressed insurance needs*."); Seascape of Hickory Point Condo. Ass'n, Inc., Phase III v. Associated Ins. Serv., Inc.*, 443 So. 2d 488 (1984); *Warehouse Foods, Inc. v. Corporate Risk Management Services, Inc.*, 530 So. 2d 442 (Fla. 1st DCA 1988); and *Wachovia Ins. Services, Inc. v. Toomey*, 994 So. 2d 980 (Fla. 2008).

Georgia – Order Taker Plus – Sometimes Heightened Duty to Advise Included

See Cottingham & Butler, Inc. v. Belu, 332 Ga. App. 684, 687–88, 774 S.E.2d 747, 750–51 (2015) (emphasis added):

> *In McCoury v. Allstate Ins. Co.*, 254 Ga.App. 27, 29(2), 561 S.E.2d 169 (2002), for example, we found that an insurance agent was not entitled to summary judgment on a negligent procurement claim because the insured parties offered evidence that they **relied on the agent's expertise in determining whether coverage was adequate**. And in *Hunt v. Greenway Ins. Agency*, 213 Ga.App. 14, 15, 443 S.E.2d 661 (1994), summary judgment for the insurance agency was appropriate when the insured presented "no evidence that the agent had any discretion in the type of insurance procured or that the proposed insured relied on the agent to decide what type of insurance was needed." Nothing in these or similar cases restricts the expertise exception to situations involving the equivalent of a business partnership between the insured and the insurance agency, or requires that an insured "turn[ ] his business records over to an agent," as C & B contends. On the contrary, the exception applies **when an insurance agent "has undertaken to perform an additional service," beyond merely procuring specified insurance, " such as determining the amount of insurance required, and the insured relies upon the agent to perform that service."** *Fregeau v. Hall*, 196 Ga.App. 493, 494, 396 S.E.2d 241 (1990).

> The Belus presented at least some evidence that they relied on C & B to assess their insurance needs in this case. According to Mrs. Belu, she did not request any particular amount of coverage. She depended upon a C & B representative to determine the type and amount of insurance Express Auto needed. And once the representative made that determination, he instructed her not to worry because she was "covered." Although C & B claims that it simply procured insurance for the Belus, this evidence raises questions of fact as to whether the agency went beyond mere procurement and offered expert advice upon which the Belus relied. *See McCoury*, *supra*; compare *Traina*, *supra*, 289 Ga.App. at 838(2), 658 S.E.2d 460 (no evidence of reliance on insurance agency's expertise where insured calculated amount and type of insurance needed and did not authorize agent to assess these needs, offer recommendations, or adjust coverage); *Brasington v. King*, 167 Ga.App. 536, 538(1), 307 S.E.2d 16 (1983) (no expertise exception where agent did not "complete any analysis of plaintiff's insurance needs"), aff'd, *King v. Brasington*, 252 Ga. 109, 312 S.E.2d 111 (1984); *Ethridge v. Associated Mutuals, Inc.*, 160 Ga.App. 687, 689, 288 S.E.2d 58 (1981) (expertise exception did not apply where insured told agent amount and type of coverage he desired, leaving no discretion to agent).

See aslo McCoury v. Allstate Ins. Co., 254 Ga.App. 27, 29(2), 561 S.E.2d 169 (2002); *Hunt v. Greenway Ins. Agency*, 213 Ga.App. 14, 15, 443 S.E.2d 661 (1994); *Fregeau v. Hall*, 196 Ga.App. 493, 494, 396 S.E.2d 241 (1990); *Brasington v. King*, 167 Ga.App. 536, 538(1), 307 S.E.2d 16 (1983); *Ethridge v. Associated Mutuals, Inc.*, 160 Ga.App. 687, 689, 288 S.E.2d 58 (1981); *MacIntyre & Edwards, Inc. v. Rich*, 267 Ga. App. 78, 80 (2004); and *Canales v. Wilson Southland Ins. Agency, Inc.*, 261 Ga. App. 529, 531 (2003)

Hawaii – Heightened Duty to Advise Sometimes Imposed

See Certain Underwriters at Lloyd's London Subscribing to Policy No. LL001HI0300520 v. Vreeken, 133 Haw. 449, 329 P.3d 354 (Ct. App. 2014):

> In Hawai‘i, however, "[a]n insurance agent owes a duty to the insured to exercise reasonable care, skill and diligence in carrying out the agent's duties in procuring insurance." *Quality Furniture, Inc. v. Hay*, 61 Haw. 89, 93, 595 P.2d 1066, 1068 (1979). Such a duty is owed to "the extent of the responsibilities that the agent had in rendering help and providing advice to the insured." *Macabio*, 87 Hawai‘i at 318, 955 P.2d at 111 (quoting *Quality Furniture*, 61 Haw. at 93, 595 P.2d at 1068) (internal quotation marks and brackets omitted).

See also Quality Furniture, Inc. v. Hay, 61 Haw. 89, 93, 595 P.2d 1066, 1069 (1979):

> In the instant case, Jerry Hay and Jerry Hay, Inc. were Quality Furniture's insurance agents for only a few months before the Sand Island warehouse was leased. Although Quality Furniture relied on the appellees' expertise, they could not procure additional insurance without the permission of Quality Furniture's vice-president William Stone. Furthermore, Quality Furniture did not submit the report forms which were requested and which would have informed appellees of the new storage location. Lastly, Quality Furniture's bookkeeper knew that the warehouse did not have fire insurance and failed to

> act to get insurance. Under these circumstances, the trier of fact did not err in finding Jerry Hay and Jerry Hay, Inc. not negligent.

See also Macabio v. TIG Ins. Co., 87 Haw. 307, 318–19, 955 P.2d 100, 111–12 (1998) (emphasis added):

> *Quality Furniture* is the only case on point in this jurisdiction. Accordingly, we turn to it for guidance. According to Quality Furniture, although an insurance agent owes a duty to the insured, **"the extent of the responsibilities that the [agent] had in rendering help and providing advice to the [insured]" turns on the facts of each case**.
>
> * * *
>
> According to the record, there appears to be no evidence that the prior dealings between agent Matsuno and the Macabios created such reliance. Like the agent in the McCall case, agent Matsuno took care of the Macabios' needs only when the Macabios consulted him. There is no evidence set forth by the Macabios that agent Matsuno informed them of changes in the insurance laws on his own accord. Without such evidence, we cannot conclude that the Macabios "justifiably relied" on agent Matsuno to inform them of the changes in the insurance law pertaining to stacking.

Idaho – Heightened Duty to Advise

See McAlvain v. Gen. Ins. Co. of Am., 97 Idaho 777, 780, 554 P.2d 955, 958 (1976) (emphasis added):

> A person in the business of selling insurance holds himself out to the public **as being experienced and knowledgeable in this complicated and specialized field**. The interest of the state that competent persons become insurance agents is demonstrated by the requirement that they be licensed by the state, I.C. s 41-1030; pass an examination administered by the state, I.C. s 41-1038; and meet certain qualifications, I.C. s 41-1034. An **insurance agent performs a personal service for his client, in advising him about the kinds and extent of desired coverage and in choosing the appropriate insurance contract for the insured**. Ordinarily, an insured will look to his insurance agent, relying, not unreasonably, on his expertise in placing his insurance problems in the agent's hands. *See discussion in Riddle-Duckworth, Inc. v. Sullivan*, 253 S.C. 411, 171 S.E.2d 486 (1969). When an insurance agent performs his services negligently, to the insured's injury, he should be held liable for that negligence just as would an attorney, architect, engineer, physician or any other professional who negligently performs personal services.

See also Keller Lorenz Co. v. Insurance Assoc. Corp., 570 P.2d 1366, 98 Idaho 678 (1977); and *Foremost Ins. Co. v. Putzier*, 627 P.2d 317, 102 Idaho 138 (1981).

Illinois – Order Taker Standard

See Office Furnishings, Ltd. v. A.F. Crissie & Co., 2015 IL App (1st) 141724, ¶¶ 21-22, 44 N.E.3d 562, 567–68 (emphasis added):

> Generally, to state a cause of action for negligence, plaintiff must show that defendant owed plaintiff a duty, defendant breached that duty, and defendant's breach was the proximate cause of plaintiff's injury. *Hills v. Bridgeview Little League Ass'n*, 195 Ill.2d 210, 228, 253 Ill.Dec. 632, 745 N.E.2d 1166 (2001). "In the context of an insurance broker procuring insurance on behalf of the plaintiff, 'the primary function of an insurance broker as it relates to an insured is **to faithfully negotiate and procure an insurance policy according to the wishes and requirements of his client**.' " *Industrial Enclosure Corp. v. Glenview Insurance Agency, Inc.*, 379 Ill.App.3d 434, 439–40, 318 Ill.Dec. 647, 884 N.E.2d 202 (2008) (quoting *Pittway Corp. v. American Motorists Insurance Co.*, 56 Ill.App.3d 338, 346–47, 13 Ill.Dec. 244, 370 N.E.2d 1271 (1977)).
>
> **This common law duty of a broker is codified in section 2–2201(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2–2201(a) (West 2010)),** which requires an insurance producer to "exercise ordinary care and skill in renewing, procuring, binding, or placing the coverage requested by the insured or proposed insured." Under this section, the duty to exercise ordinary care arises only after coverage is " 'requested by the insured or proposed insured.' " *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 37, 390 Ill.Dec. 94, 28 N.E.3d 747 (quoting 735 ILCS 5/2–2201(a) (West 2010)). Once such coverage is requested, insurance producers "exercise ordinary care and skill in responding to the request, 'either by providing the desirable coverage or by notifying the applicant of the rejection of the risk.' " *Id.* (quoting *Talbot v. Country Life Insurance Co.*, 8 Ill.App.3d 1062, 1065, 291 N.E.2d 830 (1973)).

NOTE: common law duty codified by statute. See 735 ILCS 5/2–2201(a).

Indiana – Order Taker Standard

See Myers v. Yoder, 921 N.E.2d 880, 885 (Ind. Ct. App. 2010):

> In resolving this issue, we initially observe that an insurance agent who undertakes to procure insurance for another owes the principal a general duty to exercise reasonable care, skill and good faith diligence in obtaining the insurance. Am. Family Mut. Ins. Co. v. Dye, 634 N.E.2d 844, 847 (Ind.Ct.App.1994); Craven v. State Farm Mut. Auto. Ins. Co., 588 N.E.2d 1294, 1296 (Ind.Ct.App.1992). On the other hand, an insurance agent's duty does not extend to providing advice to the insured unless the insured can establish the existence of an intimate, long-term relationship with the agent or some other special circumstance. Craven, 588 N.E.2d at 1296. In other words, something more than the standard insurer-insured relationship is required to create a special relationship obligating the agent to advise the insured about coverage. Dye, 634 N.E.2d at 848.

See also Parker v. State Farm Mut. Auto. Ins. Co., 630 N.E.2d 567, 570 (Ind.Ct.App.1994); *Bulla v. Donahue*, 366 N.E.2d 233 (Ind. Ct. App. 1977); *Nahmias Realty, Inc. v. Cohen*, 484 N.E.2d 617 (Ind. Ct. App. 1985); *Butler v. Williams*, 527 N.E.2d 231 (Ind. Ct. App. 1988); and *Parker v. State Farm Mut. Auto. Ins. Co.*, 630 N.E.2d 567 (Ind. Ct. App. 1994).

Iowa – Order Taker Standard

The Iowa legislature codified this law regarding insurance agent standard of care with Iowa Code § 522B.11(7):

> a. Unless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are limited to those duties and responsibilities set forth in *Sandbulte v. Farm Bureau Mut. Ins. Com.*, 343 N.W.2d 457 (Iowa 1984).

See also Amling v. State Farm Ins. Co., 801 N.W.2d 32 (Iowa Ct. App. 2011) (emphasis added):

> We determine the Amlings have not met their burden to show an agreement for Baumhover to render services beyond the general duty to obtain the coverage requested. There is no evidence they made a specific inquiry about additional coverage or whether they had adequate coverage, or in fact sought Baumhover's assistance in assessing their insurance needs. *See Merriam v. Farm Bureau Ins.*, 793 N.W.2d 520, 524 (Iowa 2011). There is no evidence of a direct or implied agreement that Baumhover would advise the Amlings with respect to insurance coverage. *See Langwith*, 793 N.W.2d at 226. **Where the evidence does not indicate the insurance agent has assumed a duty beyond the procurement of the coverage requested, "the insurance agent has no obligation to advise a client regarding additional coverage or risk management."** *See id.* at 223.

NOTE: common law duty codified by statute. Iowa Code § 522B.11(7).

See also Sandbulte v. Farm Bureau Mut. Ins. Co., 343 N.W.2d 457, 464-465 (Iowa 1984) ("We said such general duty is the duty to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured." * * * "We conclude that merely asking for 'sufficient coverage' is an insufficient factual basis for asserting the existence of an expanded agency agreement and, therefore, defendants Simonson and Horstman are entitled to summary judgment as a matter of law.")

Kanas – Order Taker Standard

In *Marshel Investments, Inc. v. Cohen*, 6 Kan.App.2d 672, Syl. ¶ 1, 634 P.2d 133 (1981), the court stated "An insurance agent or broker who undertakes to procure insurance for another owes to the client the duty to exercise the skill, care and diligence that would be exercised by a reasonably prudent and competent insurance agent or broker acting under the same circumstances."

Also, in the absence of "a specific agreement to do so, an insurance agent does not have a continuing duty to advise, guide, or direct an insured's coverage after the agent has complied with his obligation to obtain coverage on behalf of the insured." *Marshall v. Donnelli*, 14 Kan.App.2d 150, Syl. ¶ 1, 783 P.2d 1321 (1989), rev. denied 246 Kan. 768 (1990).

See also Duncan v. Janosik, Inc., 203 P.3d 88 (Kan. Ct. App. 2009):

> Turning to *Marshall*, we note the court held that in the absence of "a specific agreement to do so, an insurance agent does not have a continuing duty to advise, guide, or direct an insured's coverage after the agent has complied with his obligation to obtain coverage on behalf of the insured." 14 Kan.App.2d 150, Syl. ¶ 1, 783 P.2d 1321. The issue in *Marshall* was whether the agent had an affirmative duty when it is told to cancel one automobile policy to find out if a new automobile policy purchased from another agency meets the terms of an umbrella policy for minimum underlying insurance coverage. The insured did not seek his agent's advice regarding the adequacy of underlying coverage. Following up on this reasoning, the court held that the agent was not responsible for any gaps between the coverages of the two policies. 14 Kan.App.2d 150, Syl. ¶ 2, 783 P.2d 1321. There is no evidence of a specific agreement here requiring Janosik, Inc., to give guidance and advice to the Duncans.

See also Casas v. Farmers Ins. Exch., 35 Kan. App. 2d 223, 231, 130 P.3d 1201, 1207 (2005); *Carpenter v. Bolz*, 234 P.3d 866 (Kan. Ct. App. 2010); *Marker v. Preferred Fire Ins. Co.*, 211 Kan. 427, 506 P.2d 1163 (1973); and *Marshall v. Donnelli*, 14 Kan.App.2d 150, 783 P.2d 1321 (1989).

Kentucky – Order Taker Standard

See Khazai Rug Gallery, LLC v. State Auto Prop. & Cas. Ins. Co., No. 2016-CA-000129-MR, 2017 WL 945116, at *8 (Ky. Ct. App. Mar. 10, 2017):

> [I]nsurance agents owe a standard duty of reasonable care to their clients. *Id*. This duty of reasonable care does not include a duty to advise the client unless: (1) the agent undertakes to advise the client; or (2) the agent impliedly undertakes to advise the client. *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 248 (Ky. 1992) (citing *Trotter v. State Farm Mut. Auto Ins. Co.*, 297 S.C. 465, 377 S.E.2d 343, 347 (1988)). The implied assumption of duty arises in three circumstances: (1) the insured pays the insurance agent consideration beyond a mere payment of premium; (2) there is a course of dealing over an extended period of time which would put an objectively reasonable insurance agent on notice that his advice is being sought and relied on; or (3) the insured clearly makes a request for advice. Mullins, supra (citation omitted). It is the insured's burden to prove the insurer assumed such a duty. *Id*.

See also Mullins v. Commonwealth Life Ins. Co., 839 S.W.2d 245, 248–49 (Ky. 1992):

> An insurance agent ordinarily only assumes those duties found in an agency relationship. *Hardt*, supra at 880. An agent owes his principal the obligation to deal in good faith and to carry out the principal's instructions. See 29 A.L.R.2d 171. Other jurisdictions have found that, generally, an insurer may assume a duty to advise an insured when: (1) he expressly undertakes to advise the insured; or (2) he impliedly undertakes to advise the insured. *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 377 S.E.2d 343, 347 (1988). The insured has the burden of proving that the insurer assumed such a duty. *Id*.
>
> An implied assumption of duty may be present when: (1) the insured pays the insurance agent consideration beyond a mere payment of the premium, *Id*., citing *Nowell v. Dawn–Leavitt Agency, Inc.*, 127 Ariz. 48, 617 P.2d 1164 (1980); (2) there is a course of dealing

> over an extended period of time which would put an objectively reasonable insurance agent on notice that his advice is being sought and relied on, *Trotter, supra, citing Nowell, supra;* or (3) the insured clearly makes a request for advice. *Trotter, supra, citing Precision Castparts Corp. v. Johnson & Higgins of Oregon, Inc.*, 44 Or.App. 739, 607 P.2d 763 (1980).
>
> The appellants in the case at bar neither paid the insurance agent an amount beyond the premium for such advice, nor had a long-term course of dealing with the insurance *agent, nor expressly asked for advice. Thus, it appears no implied assumption of duty to advise is implicated.

See also *Associated Ins. Service, Inc. v. Garcia,* 307 S.W.3d 58, 63 (Ky. 2010).

Louisiana – Order Taker Standard

See Sitaram, Inc. v. Bryan Ins. Agency, Inc., 47,337 (La. App. 2 Cir. 9/19/12), 104 So. 3d 524, 532–33, writ denied, 2012-2283 (La. 11/30/12), 103 So. 3d 375:

> An insurance agent who undertakes to procure insurance for another owes an obligation to his client to use reasonable diligence in attempting to place the insurance requested and to notify the client promptly if he has failed to obtain the requested insurance. The client may recover from the agent the loss he sustains as a result of the agent's failure to procure the desired coverage if the actions of the agent warranted an assumption by the client that he was properly insured in the amount of the desired coverage. *Isidore Newman School, supra*; *Karam v. St. Paul Fire & Marine Insurance Co.*, 281 So.2d 728 (La.1973).
>
> This duty of "reasonable diligence" is fulfilled when the agent procures the insurance requested. *Id*. An insured has a valid claim against the agent when the insured demonstrates: 1) the insurance agent agreed to procure the insurance; 2) the agent failed to use "reasonable diligence" in attempting to procure the insurance and failed to notify the client promptly that the agent did not obtain the insurance; and 3) the agent acted in such a way that the client could assume he was insured. *Id*.

See also Isidore Newman Sch. v. J. Everett Eaves, Inc., 2009-2161 (La. 7/6/10), 42 So. 3d 352, 356; and *Karam v. St. Paul Fire & Marine Ins. Co.*, 281 So. 2d 728, 730 (La. 1973); *Isidore Newman School v. J. Everett Eaves Inc.*, 42 So.3d 352 (La. 2010).

Maine – Order Taker Standard

See Szelenyi v. Morse, Payson & Noyes Ins., 594 A.2d 1092, 1094 (Me. 1991):

> An insurance agent generally assumes only those duties found in an ordinary agency relationship, that is, to use reasonable care, diligence and judgment in obtaining the insurance coverage requested by the insured party. *Sandbulte v. Farm Bur. Mut. Ins. Co.*, 343 N.W.2d 457, 464 (Iowa 1984); *see Hardt v. Brink*, 192 F.Supp. 879, 880 (W.D.Wash.1961). An insurance agent does not have a duty to advise an insured about

> adequacy of coverage merely because an agency relationship exists between the parties. Before such a duty can arise, a special agency relationship must exist between the parties. *See, e.g., Nelson v. Davidson*, 155 Wis.2d 674, 456 N.W.2d 343, 347 (1990); *Bruner v. League Gen. Ins. Co.*, 164 Mich.App. 28, 416 N.W.2d 318, 320 (1987); *Nowell v. Dawn Leavitt Agency, Inc.*, 127 Ariz. 48, 617 P.2d 1164, 1168 (App.1980).

See also Morse Bros. Inc. v. Desmond & Payne, Inc., No. CV-02-365, 2003 WL 24132272, at *3 (Me. Super. Dec. 17, 2003); and *Noveletsky v. Metro. Life Ins. Co.*, No. 2:12-CV-00021-NT, 2013 WL 2945058, at *6 (D. Me. June 14, 2013).

Maryland – Order Taker Standard

See Sadler v. Loomis Co., 139 Md. App. 374, 410–12, 776 A.2d 25, 46–47 (2001):

> Numerous other states are to the same effect; absent a request from the insured or a "special relationship" between the insured and the agent or broker, an insurance agent or broker does not owe a continuing or affirmative duty to render unsolicited advice to its insured as to the adequacy of liability coverage.
>
> * * *
>
> Our resolution of this case does not turn on whether Loomis should have done more to assure Sadler's financial protection. Nor is the outcome based on our conclusion that Sadler was in some way contributorily negligent. Rather, we have determined that, in the absence of a special relationship, an insurance agent or broker has no affirmative, legally cognizable tort duty to provide unsolicited advice to an insured regarding the adequacy of liability coverage.
>
> Sadler testified that she thought $100,000 in liability coverage was "enough," because she never "dreamed" that she would be involved in a serious automobile accident that "would cost that much." Her plight is probably not uncommon; we recognize that some people, especially the elderly, might not keep pace with the modern circumstance of large or runaway verdicts. It does not follow, however, that an insurance agent or broker bears responsibility for identifying those customers *411 who do not keep current in order to advise them accordingly. Although the record does not reflect the particular number of years for which Sadler had automobile liability coverage in the amount of $100,000, she apparently was insured at that level for several years. Whether that amount of coverage was too low, too high, or just right was a matter for appellant's consideration and determination.
>
> In a sense, it is a matter of business judgment on the part of the broker or agent, and personal preference on the part of the customer, that determines whether a customer or agent pursues a laissez-faire style rather than a proactive, aggressive one. To be sure, some customers prefer the "don't call me, I'll call you" approach with regard to their insurance agents and brokers, believing that they can determine for themselves what they need, and that insurance brokers and agents are just out to sell policies or excessive coverages that are unnecessary. Many of these customers undoubtedly believe that they

> are able to decide the extent of risk that can or should tolerate, and they know best what they can afford to pay in premiums. On the other hand, there are customers who undoubtedly want an insurance broker or agent who looks out for the customer's interests before a problem develops, and alerts a client to the kinds of insurance available for maximum protection, or who makes suggestions relating to appropriate coverage and adequacy of coverage. For many of the same reasons, some agents or brokers may consider it prudent business practice to adopt a proactive style, and volunteer information to an insured regarding additional types of coverage, the need for increased coverage, or to help the insured assess his or her particular insurance needs. In contrast, others may believe that they should only respond to a customer's particular request, without aggressively attempting to suggest alternatives.
>
> We empathize with appellant's unfortunate situation. We also recognize that other insurance agents may have been more assertive, proactive, or aggressive in suggesting that appellant procure greater protection, and that appellant would have been better served by such an agency. This does not mean, however, that appellee is liable in tort for failing to recommend to appellant that she secure greater liability protection. Accordingly, we shall affirm.

See also Cooper v. Berkshire Life Ins. Co., 810 A.2d 1045, 1073 (Md. 2002); Jones v. Hyatt Insurance Agency, Inc., 741 A.2d 1099 (Md. 1999); and *Robinson v. Liberty Ins. Corp., No.* CV WMN-16-42, 2016 WL 3653969, at *4 (D. Md. July 8, 2016).

Massachusetts – Order Taker Standard

See Guida v. Herbert H. Landy Ins. Agency, Inc., 84 Mass. App. Ct. 1105, 991 N.E.2d 188 (2013):

> The general relationship between an insurance agency and its policyholder customer does not impose a duty on the agency to investigate the customer's needs for particular coverage or to advise about the availability of insurance products to meet those needs. *Robinson v. Charles A. Flynn Ins. Agency, Inc*., 39 Mass.App.Ct. 902, 902–903 (1995). However, an insurance agent or broker may acquire a greater duty of investigation, advice, and assistance to an insured by reason of "special circumstances." *McCue v. Prudential Ins. Co. of Am.*, 371 Mass. 659, 661–662 (1976). *Martinonis v. Utica Natl. Ins. Group*, 65 Mass.App.Ct. 418, 421 (2006). Such "special circumstances of assertion, representation and reliance" may create a duty of due care. *McCue v. Prudential Ins. Co. of Am*., supra at 661, quoting from *Rapp v. Lester L. Burdick, Inc.*, 336 Mass. 438, 442 (1957).

See also Robinson v. Charles A. Flynn Ins. Agency, 39 Mass.App.Ct. 902, 653 N.E.2d 207, 207-08 (1995); *Martinonis v. Utica Natl. Ins. Group*, 65 Mass. App. Ct. 418, 420–421, 840 N.E.2d 994 (2006); and *Rayden Engr. Corp. v. Church*, 337 Mass. 652, 655, 151 N.E.2d 57 (1958).

Michigan – Arguably Heightened Duty to Advise if Independent Insurance Agent (Not Captive)

See Genesee Foods Servs., Inc. v. Meadowbrook, Inc., 279 Mich. App. 649, 656, 760 N.W.2d 259, 263 (2008): "Although defendants had a limited fiduciary relationship with Citizens for purposes of accepting and binding Citizens according to the terms of the 1988 agreement, because defendants were independent insurance agents when they assisted plaintiffs, **their primary fiduciary duty of loyalty rested with plaintiffs**, who could depend on this duty of loyalty to ensure that defendants were acting in their best interests, both in terms of **finding an insurer that could provide them with the most comprehensive coverage and in ensuring that the insurance contract properly addressed their needs**." (Emphasis added).

See also Deremo v. TWC & Assocs., Inc., No. 305810, 2012 WL 3793306, at *3 (Mich. Ct. App. Aug. 30, 2012; ("Thus, because TWC's agents are independent agents, Genessee governs, and they owed Croad a duty to provide him with the most comprehensive coverage and ensure that the insurance contract properly addressed his needs.")

Contrast above with *Harts v. Farmers Ins. Exch.*, 461 Mich. 1, 6–11, 597 N.W.2d 47, 50–52 (1999) (emphasis added):

> Sound policy reasons also support the general rule that **insurance agents have no duty to advise the insured regarding the adequacy of insurance coverage**. For instance, in *Nelson v. Davidson*, supra at 681–682, 456 N.W.2d 343, the Wisconsin Supreme Court noted that a contrary rule (1) "would remove any burden from the insured to take care of his or her own financial needs and expectations in entering the marketplace and choosing from the competitive products available," (2) could result in liability for a failure to advise a client "of every possible insurance option, or even an arguably better package of insurance offered by a competitor," and (3) could provide an insured with an opportunity to self-insure "after the loss by merely asserting they would have bought the additional coverage had it been offered."
>
> Thus, under the common law, **an insurance agent whose principal is the insurance company owes no duty to advise a potential insured about any coverage**. Such an agent's job is to merely present the product of his principal **and take such orders as can be secured from those who want to purchase the coverage offered**. Our Legislature also recognizes the limited nature of the agent's role. Those who offer insurance products have been regulated by statute in Michigan for at least 120 years, with insurance agents and insurance counselors being in fact subject to licensure before they can offer their services to the public. The most recent revisions to these regulatory statutes became effective in 1973. What is clear from these provisions is that the Legislature has long distinguished between insurance agents and insurance counselors, with agents being essentially **order takers** while it is insurance counselors who function primarily as advisors.
>
> However, as with most general rules, the general no-duty-to-advise rule, where the agent functions as simply an **order taker** for the insurance company, is subject to change when an event occurs that alters the nature of the relationship between the agent and the insured. This alteration of the ordinary relationship between an agent and an insured has been described by our Court of Appeals as a "special relationship" that gives rise to a

> duty to advise on the part of the agent. *Bruner*, supra; *see also Marlo Beauty Supply, Inc. v. Farmers Ins. Group of Cos.*, 227 Mich.App. 309, 314–315, 575 N.W.2d 324 (1998); *Stein v. Continental Casualty Co.*, 110 Mich.App. 410, 416–417, 313 N.W.2d 299 (1981); *Palmer v. Pacific Indemnity Co.*, 74 Mich.App. 259, 267, 254 N.W.2d 52 (1977).
>
> * * *
>
> We thus modify the "special relationship" test discussed in *Bruner* and the other cases cited above so that the general rule of no duty changes when (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured.
>
> In this case, there is no documentary evidence suggesting that Mr. Pietrzak misrepresented the coverage offered or provided. As stated, plaintiffs had in fact received notice that uninsured motorist coverage was available for the Cavalier only three months before the accident. Further, there is no evidence that Mr. Harts made a request about insurance coverage on the Cavalier that might be construed as ambiguous or that would have required clarification. Mr. Harts never requested or inquired about "full coverage" on the Cavalier. Finally, Mr. Pietrzak did not expressly agree or promise to advise Mr. Harts about insurance coverage generally or uninsured motorist coverage specifically. Thus, with respect to the coverage obtained on the Cavalier, no event occurred that could or would take this case outside the general rule that Mr. Pietrzak owed plaintiffs no duty to advise them about coverage.

It is to be noted that several unpublished decisions of the Michigan Court of Appeals have issued opinions dealing with independent insurance agents where they followed *Harts* and disagreed with the decisions in *Genesee Foods* and *Deremo*. *See e.g. Chem. Tech., Inc. v. Berkshire Agency, Inc.*, No. 326394, 2016 WL 4008455, at *2 (Mich. Ct. App. July 26, 2016):

> Generally, "insurance agents have no duty to advise the insured regarding the adequacy of insurance coverage." *Id*. at 7, 597 N.W.2d 47. Instead, "[s]uch an agent's job is to merely present the product of his principal and take such orders as can be secured for those who want to purchase the coverage offered." *Id*. at 8, 597 N.W.2d 47. "However, as with most general rules, the general no-duty-to-advise rule ... is subject to change when an event occurs that alters the nature of the relationship between the agent and the insured." *Id*. at 9–10, 597 N.W.2d 47. Under "the 'special relationship' test,"
>
> > the general rule of no duty changes when (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advise and the agent, though he need not, gives advise that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured. [Id. at 10–11, 597 N.W.2d 47.]
>
> In this case, the circuit court concluded that Berkshire had no duty to advise Chemical regarding the adequacy of its insurance coverage under Harts. Specifically, it concluded

> that the general no-duty-to-advise rule and none of the four exceptions set forth in the "special relationship" test applied.

See also Estate of Richardson v. Grimes, No. 312782, 2014 WL 231917, at *5 (Mich. Ct. App. Jan. 21, 2014).

Minnesota – Order Taker Standard

See *Gabrielson v. Warnemunde*, 443 N.W.2d 540 (Minn. 1989):

> Absent an agreement to the contrary, an agent has **no duty beyond what he or she has specifically undertaken to perform for the client**. * * * Thus, the agent is under **no affirmative duty to take other actions** on behalf of the client if the typical principal agent relationship exists.

Id. at 543-44 (citations omitted) (emphasis added).

Under ***Gabrielson***, and subsequent decisions following ***Gabrielson***, Minnesota courts have explicitly defined what an insurance agent's specific and limited duties are under Minnesota law and determined that an insurance agent's duties under Minnesota law are to **simply act in good faith and to follow the instructions of the insurance customer**. *See* ***Gabrielson,*** 443 N.W.2d 540, 543 ("An insurance agent's duty is ordinarily limited to the duties imposed in any agency relationship, to act in good faith and follow instructions.")

See also Nelson v. Am. Family Mut. Ins. Co., 262 F. Supp. 3d 835, 858–59 (D. Minn. 2017); *Herzog v. Cottingham & Butler Ins. Servs., Inc.*, No. A14-0528, 2015 WL 134043, at *3 (Minn. Ct. App. Jan. 12, 2015); *Louwagie v. State Farm Fire & Cas. Co.*, 397 N.W.2d 567, 569 (Minn.App.1986), review denied (Minn. Feb. 13, 1987); *Philter, Inc. v. Wolff Ins. Agency, Inc.*, No. A10-2230, 2011 WL 2750709, at *2-3 (Minn. Ct. App. July 18, 2011*); Johnson v. Farmers & Merchants State Bank of Balaton*, 320 N.W.2d 892, 898 (Minn. 1982); Johnson v. Urie, 405 N.W.2d 887, 891 (Minn. 1987); Tollefson v. American Family Ins. Co., 302 Minn. 1, 3, 226 N.W.2d 280, 284 (1974); *Bus. Impact Grp., LLC v. Stanton Grp.*, LLC, No. A09-2187, 2010 WL 2733390, at *2 (Minn. Ct. App. July 13, 2010); *Scottsdale Ins. Co. v. Transp. Leasing/Contract, Inc.*, 671 N.W.2d 186, 196 (Minn.App.2003); *Higgins ex rel. Higgins v. Winter*, 474 N.W.2d 185, 188 (Minn.App.1991); and *Osendorf v. American Family*, 318 N.W.2d 237 (Minn. 1982).

Mississippi – Order Taker Standard

See Mladineo v. Schmidt, 52 So.3d 1154, 1163 (Miss. 2010):

> We go further to clarify that, contrary to a minority of jurisdictions, we do not find that insurance agents in Mississippi have an affirmative duty to advise buyers regarding their coverage needs. The majority of jurisdictions have stated strong policy reasons for finding that an agent does not have an affirmative duty to advise the insured of coverage needs: insureds are in a better position to assess their assets and risk of loss, coverage needs are often personal and subjective, and imposing liability on agents for failing to

> advise insureds regarding the sufficiency of their coverage would remove any burden from the insured to take care of his or her own financial needs.

See also Ritchie v. Smith, 311 So.2d 642, 646 (Miss. 1975).

Missouri – Order Taker Standard

See Jones v. Kennedy, 108 S.W.3d 203, 207 (Mo. Ct. App. 2003):

> All parties agree, and we do as well, that insurance agents are held to a professional standard of care. As to what is, or is not, included within that standard of care, we note that Missouri does not recognize a duty on the part of an insurance agent to advise customers as to their particular insurance needs or as to the availability of optional coverage. *Blevins v. State Farm Fire & Cas. Co.*, 961 S.W.2d 946, 951 (Mo.App.1998).
>
> In a case in which an appellant urged the Eastern District of this Court to impose a duty on insurance agents to inform potential customers of the availability of optional coverage, specifically underinsured motorist coverage, as part of the generalized standard of care for the insurance industry, the Court declined. *Farmers Ins. Co., Inc. v. McCarthy*, 871 S.W.2d 82, 85–86 (Mo.App.1994). The Court stated specific policy reasons, including that the legislature neither requires motorists to carry underinsured coverage nor insurance companies/agents to offer or explain such available coverage. *Id*. at 86. The Court also analyzed some of the cases Appellant cites from other jurisdictions that have imposed such a duty, but found that they were unpersuasive because they failed to address those policy concerns. *Id*.

See also Blevins v. Am. Family Mut. Ins. Co., 423 S.W.3d 837, 841 (Mo. Ct. App. 2014):

> A broker or agent who undertakes to procure insurance for another for compensation owes a duty of reasonable skill and diligence in obtaining the insurance requested, and the broker or agent may be sued in tort for negligent failure to procure that insurance. *Extended Stay, Inc. v. American Auto. Ins. Co.*, 375 S.W.3d 834, 841 (Mo.App.E.D.2012) (internal citation omitted). To state a claim of negligent failure to procure insurance, a plaintiff must plead facts to show that: (1) the agent agreed to procure, for compensation, insurance; (2) the agent failed to procure the agreed upon insurance, and in doing so failed to exercise reasonable care and diligence; and (3) the plaintiff suffered damages as a result of the failure. *Id*.
>
> In a negligence action, the plaintiff must prove, among other things, that the defendant had a duty to the plaintiff. *Hardcore Concrete, LLC v. Fortner Ins. Services, Inc.*, 220 S.W.3d 350, 355 (Mo.App.S.D.2007) (citing *Hecker v. Missouri Prop. Ins. Placement Facility*, 891 S.W.2d 813, 816 (Mo. banc 1995)). The question of whether such a duty exists is one of law, and therefore, it is a question for the trial court. *Id*. A legal duty may arise under law, contract, or from the legislature. *Stein*, 284 S.W.3d at 605. Missouri courts have long held that if an agent undertakes to procure insurance for another for compensation, that agent owes a duty of care in obtaining the insurance. *Extended Stay, Inc.*, 375 S.W.3d at 841. However, a prerequisite to the imposition of such a duty is

> "some consensual undertaking by the agent, for at least the prospect of compensation, to act on behalf of the customer as his principal." *Farmers Ins. Co., Inc. v. McCarthy*, 871 S.W.2d 82, 85 (Mo.App.E.D.1994) (internal citation omitted). Here, Plaintiffs allege in their petitions that Foust agreed to procure, for compensation, insurance to cover Busey Truck's property, including their personal property leased by Busey Truck. They do not allege that Foust agreed to purchase insurance for them, or that they provided compensation to her for the procurement of such insurance.

Montana – Order Taker Standard

See Fillinger v. Nw. Agency, Inc., of Great Falls, 283 Mont. 71, 83–84, 938 P.2d 1347, 1355 (1997):

> Northwestern asserts that the District Court erred in instructing the jury because the Fillingers are pursuing a professional negligence claim and therefore they must have provided expert testimony as to the standard of care, duty of care, and breach of that duty by the insurance agent. This Court has previously addressed the legal standard of care for insurance agents with respect to insurance procurement. In *Gay v. Lavina State Bank* (1921), 61 Mont. 449, 202 P. 753, we explained:
>
> > [A]s between the insured and his own agent or broker authorized by him to procure insurance there is the usual obligation on the part of the latter to carry out the instructions given him and faithfully discharge the trust reposed in him, and he may become liable in damages for breach of duty. If he is instructed to procure specific insurance and fails to do so, he is liable to his principal for the damage suffered by reason of the want of such insurance.
>
> *Gay*, 202 P. at 755, followed in *Lee v. Andrews* (1983), 204 Mont. 527, 667 P.2d 919.
>
> Jenkins herself testified as an insurance agent to what the duties and responsibilities are of an insurance agent when asked to procure specific insurance coverage. No additional independent expert testimony is required to establish the standard of care.
>
> Although we have not specifically addressed this issue, it is clear to this Court that the determination of whether an insurance agent reasonably fulfilled his or her duty and procured the coverage requested is easily within the common experience and knowledge of lay jurors. No expert testimony is required as there are no technical insurance issues beyond the understanding of the trier of fact. *See, e.g., Shahrokhfar v. State Farm Mut. Auto. Ins. Co.* (1981), 194 Mont. 76, 634 P.2d 653 (holding that the question whether the actions of an insurance agent and his attorney were negligent was well within the realm of knowledge of a layperson); *Salt Lake City School Dist. v. Galbraith & Green,Inc.* (Utah App.1987), 740 P.2d 284 (applying the majority rule that "expert testimony is not required in matters involving insurance agents and brokers unless technical insurance issues beyond the understanding of the average trier of fact are involved").

See also Bailey v. State Farm Mut. Auto. Ins. Co., 2013 MT 119, ¶ 20, 370 Mont. 73, 79, 300 P.3d 1149, 1153:

> Under Montana law, it is "well established that an insurance agent owes an absolute duty to obtain the insurance coverage which an insured directs the agent to procure." *Monroe v. Cogswell Agency*, 2010 MT 134, ¶ 32, 356 Mont. 417, 234 P.3d 79; *Fillinger v. Northwestern Agency*, 283 Mont. 71, 83, 938 P.2d 1347, 1355 (1997); *Lee v. Andrews*, 204 Mont. 527, 532, 667 P.2d 919, 921 (1983); *Gay v. Lavina State Bank*, 61 Mont. 449, 458, 202 P. 753, 755 (1921). If an insurance agent is instructed to procure specific insurance and fails to do so, he is liable for damages suffered due to the absence of such insurance. *Fillinger*, 283 Mont. at 83, 938 P.2d at 1355; *Lee*, 204 Mont. at 532, 667 P.2d at 921; *Gay*, 61 Mont. at 458, 202 P. at 755.

See also Monroe v. Cogswell Agency, 2010 MT 134, ¶¶ 31-32, 356 Mont. 417, 234 P.3d 79 (2010); *Lee v. Andrews*, 204 Mont. 527, 532, 667 P.2d 919 (1983);

Nebraska – Order Taker Standard

See Hansmeier v. Hansmeier, 25 Neb. App. 742, 752–53 (2018) (emphasis added):

> The Nebraska Supreme Court has stated that an insurance agent has no duty to anticipate what coverage an insured should have. Dahlke v. John F. Zimmer Ins. Agency, 245 Neb. 800, 515 N.W.2d 767 (1994). Rather, when an insured asks an insurance agent to procure insurance, the insured has a duty to advise the insurance agent as to the desired insurance. *Id*.
>
> While it may be good business for an insurance agent to make such suggestions, absent evidence that an insurance agent has agreed to provide advice or the insured was reasonably led by the agent to believe he would receive advice, the failure to volunteer information does not constitute either negligence or breach of contract for which an insurance agent must answer in damages. *Polski v. Powers*, 221 Neb. 361, 377 N.W.2d 106 (1985) (although agent may have been aware that clients had built new building and were keeping hogs in building, he had no knowledge that they wished to change their insurance coverage or to obtain other or different coverage). "[I]t would be an unreasonable burden to impose upon insurance agents a duty to anticipate what coverage an individual should have, absent the insured's requesting coverage in at least a general way." *Id*. at 364, 377 N.W.2d at 108. *See, also, Flamme v. Wolf Ins. Agency*, 239 Neb. 465, 476 N.W.2d 802 (1991) (no evidence that clients requested underinsured motorist coverage over and above someone else's liability insurance or that agent agreed to obtain such coverage; therefore, agent and his agency could not be held liable for failing to obtain such coverage).
>
> As well-stated by the district court in this case:
>
> > If it is an unreasonable burden to require insurance agents to anticipate what coverage an individual should have absent the insured's request, it would be an equally unreasonable burden to require an insurance agent to anticipate what steps the insured should take to not have the coverage he has already told the agent he does not want.

> Because Merva had no duty to advise Scott and Karie that workers' compensation insurance was available or necessary, their negligence action fails as a matter of law.

See also Flamme v. Wolf Insurance Agency, 239 Neb. 465, 476 N.W.2d 802 (1991): *Dahlke v. John F. Zimmer Insurance Agency*, 245 Neb. 800, 515 N.W.2d 767 (1994); and *Broad v. Randy Bauer Insurance Agency, Inc.*, 275 Neb. 788, 749 N.W.2d 478 (2008).

Nevada – Order Taker Standard

See Flaherty v. Kelly, No. 59582, 2013 WL 7155078, at *2 (Nev. Dec. 18, 2013):

> In Nevada, an agent or broker has a duty "to use reasonable diligence to place the insurance and seasonably to notify the client if he is unable to do so." *Keddie v. Beneficial Ins., Inc.*, 94 Nev. 418, 420, 580 P.2d 955, 956 (1978). An insurance agent or broker does not owe the insured any additional duties other than procuring the requested insurance.

See also Keddie v. Beneficial Ins., Inc., 94 Nev. 418, 420, 580 P.2d 955, 956 (1978); *Havas v. Carter*, 89 Nev. 497, 499-500 (1973); and *Lucini-Parish Ins., Inc. v. Buck*, 108 Nev. 617 (1992).

New Hampshire – Order Taker Standard

See Sintros v. Hamon, 148 N.H. 478, 482, 810 A.2d 553, 557 (2002): "These cases do not persuade us to depart from the majority rule that an insurance agent owes clients a duty of reasonable care and diligence, but absent a special relationship, that duty does not include an affirmative, continuing obligation to inform or advise an insured regarding the availability or sufficiency of insurance coverage."

See also DeWyngaerdt v. Bean Ins. Agency, Inc., 151 N.H. 406, 407–09, 855 A.2d 1267, 1269–71 (2004).

New Jersey – Order Taker Standard

See Duffy v. Certain Underwriters at Lloyd's of London Subscribing to Policy No. 09ASC185004, No. A-5797-11T4, 2014 WL 3557861, at *6 (N.J. Super. Ct. App. Div. July 21, 2014):

> *In President v. Jenkins*, 180 N.J. 550, 853 A.2d 247 (2004) the Court clarified the scope of an insurance broker's obligations to a prospective insured, stating the broker is responsible: "(1) to procure the insurance; (2) to secure a policy that is neither void nor materially deficient; and (3) to provide the coverage he or she undertook to supply." *Id*. at 569, 853 A.2d 247. However, "[t]he duty of a broker or agent ... is not unlimited." *Carter Lincoln–Mercury, Inc., Leasing Div. v. EMAR Group, Inc.*, 135 N.J . 182, 190, 638 A.2d 1288 (1994).

See also Carter Lincoln-Mercury, Inc., Leasing Div. v. EMAR Grp., Inc., 135 N.J. 182, 190, 638 A.2d 1288, 1292 (1994): "The duty of a broker or agent, however, is not unlimited. In *Wang*, supra, 125 N.J. at 11-12, 592 A.2d 527, we held that an insurance agent had no duty to advise an insured to consider higher amounts of homeowner's insurance."

See also Rider v. Lynch, 42 N.J. 465, 470, 201 A.2d 561, 563 (1964); and *Wang v. Allstate Ins. Co.*, 125 N.J. 2, 4, 592 A.2d 527, 528 (1991).

New Mexico – Order Taker Standard

See Sanchez v. Martinez, 1982-NMCA-168, ¶¶ 14-15, 99 N.M. 66, 69–70, 653 P.2d 897, 900–01:

> An insurance agent or broker who undertakes to procure insurance for others and, through his fault or neglect, fails to do so, may be held liable for any damage resulting therefrom. Under such facts, liability may be predicated either upon the theory that defendant is the agent of the insured and has breached a contract to procure a policy of insurance, or that he owes a duty to his principal to exercise reasonable skill, care, and diligence in securing the insurance requested and negligently failed to do so. The defendant may be sued for breach of contract or negligent default in the performance of a duty imposed by contract or both. *Brown v. Cooley*, 56 N.M. 630, 247 P.2d 868 (1952); *see also Lanier v. Securities Acceptance Corp.*, 74 N.M. 755, 398 P.2d 980 (1965); *White v. Calley*, 67 N.M. 343, 355 P.2d 280 (1960); *Wiles v. Mullinax*, 267 N.C. 392, 148 S.E.2d 229 (1966).
>
> An agent who agrees to procure or renew an expired policy of insurance has a duty to either obtain the insurance, renew or replace the policy, or seasonably notify the principal that he is unable to do so in order that the principal may obtain insurance elsewhere. *Butler v. Scott*, 417 F.2d 471 (10th Cir.1969) (applying N.M. law); *Trinity Universal Ins. Co. v. Burnette*, 560 S.W.2d 440, (Tex.Civ.App.1977); *Ezell v. Associates Capital Corporation*, 518 S.W.2d 232 (Tenn.1974); *Wiles*, supra.

See also Federated Mut. Ins. Co. v. Ever-Ready Oil Co., No. 09-CV-857 JEC/RHS, 2012 WL 12917267, at *10 (D.N.M. Mar. 29, 2012):

> The liability of a broker "who undertakes to procure insurance for others and, through his fault or neglect, fails to do so," may be predicated on negligence or breach of contract. *Sanchez v. Martinez*, 99 N.M. 66, 70, 653 P.2d 897, 900 (Ct. App. 1982). A failure to procure insurance claim, predicated on a breach of contract, requires a legally enforceable promise to procure coverage. *Nance v. L.J. Dolloff Associates, Inc.*, 138 N.M. 851, 856, 126 P.3d 1215, 1220 (2005). Summary judgment on a failure to procure insurance claim is appropriate where no request for specific coverage has been made. *State Farm Fire and Cas. Co., v. Price*, 101 N.M. at 446, 684 P.2d at 532; *Hardison v. Balboa Ins. Co.*, 4 Fed. Appx. 663, 673 (10th Cir. 2001) (unpublished) (liability for failure to procure insurance, under either a contract or tort theory, occurs only where the insured has actually requested coverage from the agent).

New York – Order Taker Standard

See Murphy v. Kuhn, 90 N.Y.2d 266, 660 N.Y.S.2d 371, 682 N.E.2d 972, 974 (1997). (Insurance agents or brokers are not personal financial counselors and risk managers, approaching guarantor status, and it is well settled that agents have no continuing duty to advise, guide, or direct a client to obtain additional coverage.): "Generally, the law is reasonably settled on initial principles that insurance agents have a common-law duty to obtain requested coverage for their clients within a reasonable time or inform the client of the inability to do so; however, they have no continuing duty to advise, guide or direct a client to obtain additional coverage."

See also *AB Oil Servs. Ltd. d/b/a AB ENVIRONMENTAL, ABLE ENVIRONMENTAL SERVICES INC. & FAIRWAY ENVIRONMENTAL LLC, Plaintiffs, v. TCE Ins. Servs., Inc. & ANTHONY DeFEDE, Defendants*., No. 17-603133, 2018 WL 2423893, at *4 (N.Y. Sup. Ct. May 24, 2018); *Holborn Corp. v. Sawgrass Mut. Ins. Co.*, No. 16-CV-09147 (AJN), 2018 WL 485975, at *8 (S.D.N.Y. Jan. 17, 2018); *Cromer v. Rosenzweig Ins. Agency Inc.*, 156 A.D.3d 1192, 1194, 68 N.Y.S.3d 169, 172 (N.Y. App. Div. 2017); *Joseph v. Interboro Ins. Co.*, 144 A.D.3d 1105, 1108, 42 N.Y.S.3d 316, 320 (N.Y. App. Div. 2016) ("Thus, generally, "[t]o set forth a case for negligence or breach of contract against an insurance broker, a plaintiff must establish that a specific request was made to the broker for the coverage that was not provided in the policy.")

North Carolina – Order Taker Standard

See Pinney v. State Farm Mut. Ins. Co., 146 N.C. App. 248, 254–55, 552 S.E.2d 186, 191 (2001):

> We noted that "an insurance agent has a duty to procure additional insurance for a policyholder at the request of the policyholder." *Id*. (*citing Johnson v. Tenuta & Co.*, 13 N.C.App. 375, 381, 185 S.E.2d 732, 736 (1972)). "The duty does not, however, obligate the insurer or its agent to procure a policy for the insured which had not been requested." *Id*. (*citing Baldwin v. Lititz Mutual Ins. Co.*, 99 N.C.App. 559, 561, 393 S.E.2d 306, 308 (1990)).

See also Baggett v. Summerlin Ins. & Realty, Inc., 354 N.C. 347, 554 S.E.2d 336, 337 (2001); *Meadlock v. Am. Family Life Assur. Co.*, 221 N.C. App. 669, 729 S.E.2d 127 (2012)

North Dakota – Order Taker Standard

See APM, LLLP v. TCI Ins. Agency, Inc., 2016 ND 66, ¶ 10, 877 N.W.2d 34, 36 (applying and adopting Minnesota *Gabrielson* case in a North Dakota State Court case):

> In *Rawlings*, 455 N.W.2d at 577, this Court adopted the Minnesota duty of care standard for insurance agents, "which requires an insurance agent to exercise the skill and care which a reasonably prudent person engaged in the insurance business would use under similar circumstances." *See Gabrielson v. Warnemunde*, 443 N.W.2d 540, 543 (Minn. 1989). "This duty is ordinarily limited to the duties imposed in any agency relationship to act in good faith and follow instructions." *Rawlings*, at 577.

In the APM, LLLP case APM purchased a Travelers Builders Risk Policy that covered the construction of a four-story apartment building located in Fargo, North Dakota. APM purchased the Travelers Builders Risk Policy through Gaard, an insurance agent of TCI. On September 7, 2012, there was a fire during the construction of the apartment building.

The fire allegedly delayed the opening of the construction building from February 1, 2013 until July 1, 2013. Travelers denied a portion of APM's claim for lost rents and additional interest charges on the basis that the Travelers Builders Risk Policy did not provide such coverage. Despite denying APM's claim for lost rent and interest, Travelers paid APM a total of $508,102.54 under the Travelers Builders Risk Policy procured by Gaard. On August 25, 2014, APM commenced the above-entitled action against TCI alleging that TCI and Gaard were negligent and at fault for failing to offer APM a policy endorsement providing coverage for loss of rent/income or soft costs such as interest. During discovery, APM was asked to identify the applicable standard of care that should be applied to TCI and Gaard in this action. In response, APM contends that, "Defendant should have offered an endorsement to the Builders Risk Policy which provided coverage for lost rent and soft costs."

TCI denied liability and moved for summary judgment, claiming that APM did not specifically request the additional coverage for lost rent and soft costs and that TCI and Gaard were not required to offer the additional coverage to APM. The district court granted TCI's motion, determining only one conclusion could be drawn from the facts. The court concluded APM failed to raise a genuine issue of material fact as to whether Gaard breached his duty to APM. The court also concluded Gaard's duty was not enhanced because APM failed to establish a genuine issue of material fact indicating a special relationship existed between APM and TCI. The North Dakota Supreme Court affirmed the district court on appeal.

Ohio – Order Taker Standard

See Tornado Techs., Inc. v. Quality Control Inspection, Inc., 2012-Ohio-3451, ¶ 19, ¶¶ 24-30, 977 N.E.2d 122, 125-127 (2012):

> Pertinent to the elements of duty and breach, an insurance agency has a duty to exercise good faith and reasonable diligence in obtaining insurance that its customer requests. *Moor v. Am. Family Ins. Co.*, 3d Dist. No. 4–09–13, 2009-Ohio-4442, 2009 WL 2710071, *citing Fry v. Walters & Peck Agency, Inc.*, 141 Ohio App.3d 303, 310, 750 N.E.2d 1194 (6th Dist.2001). *See also First Catholic Slovak Union v. Buckeye Union Ins.*, 27 Ohio App.3d 169, 170, 499 N.E.2d 1303 (8th Dist.1986); S*tuart v. Natl. Indemn. Co.*, 7 Ohio App.3d 63, 454 N.E.2d 158 (8th Dist.1982). However, an insurance agent owes no duty to seek replacement coverage for an insured in the absence of a request by the insured to do so. *See Slovak.*
>
> * * *
>
> Nonetheless, QCI maintains that it relied on FAC's expertise to procure sufficient coverage. In essence, QCI argue that FAC were fiduciaries with a higher duty of care, a duty not only to provide the coverage requested but also to advise QCI of the amount of coverage needed.

The Ohio Supreme Court has defined a "fiduciary relationship" as one "in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust." *Nichols v. Schwendeman*, 10th Dist. No. 07AP–433, 2007-Ohio-6602, 2007 WL 4305718, *citing Ed Schory & Sons, Inc. v. Soc. Natl. Bank*, 75 Ohio St.3d 433, 442, 1996-Ohio-194, 662 N.E.2d 1074, *quoting In re Termination of Emp.*, 40 Ohio St.2d 107, 115, 321 N.E.2d 603 (1974).

A fiduciary relationship may be created out of an informal relationship "only when both parties understand that a special trust or confidence has been reposed." *Umbaugh Pole Bldg. Co., Inc. v. Scott*, 58 Ohio St.2d 282, 390 N.E.2d 320 (1979), paragraph one of the syllabus; *Hoyt v. Nationwide Mut. Ins. Co.*, 10th Dist. No. 04AP–941, 2005-Ohio-6367, 2005 WL 3220192. Thus, a fiduciary relationship cannot be unilateral; it must be mutual. *Horak v. Nationwide Ins. Co.*, 9th Dist. No. CA 23327, 2007-Ohio-3744, 2007 WL 2119861.

However, it is important to note that while the law has recognized a public interest in fostering certain professional relationships, such as the doctor-patient and attorney-client relationships, it has not recognized the insurance agent-client relationship to be of similar importance. *Rose v. Landen*, 12th Dist. No. CA2004–06–066, 2005-Ohio-1623, 2005 WL 752431, *citing Nielsen Ents., Inc. v. Ins. Unlimited Agency, Inc.*, 10th Dist. No. 85AP–781, 1986 WL 5411 (May 8, 1986). *See also Roberts v. Maichl*, 1st Dist. No. C–040002, 2004-Ohio-4665, 2004 WL 1948718.

In this case, we find that the record shows the relationship between QCI and FAC was nothing more than an ordinary business relationship between insurance agent and client. Furthermore, QCI was in the best position to know how much coverage it needed. QCI knew the quantity and the quality of the data it was storing off-site with Tornado. QCI knew that its off-site coverage was limited to $50,000. QCI was in a position to know the type of impact the loss of said data would have on its company. QCI was in a position to properly forecast the financial cost of retrieving or re-creating data that could be lost off-site or even on its own premises. Given that QCI was in the uniquely superior position of knowing the nature and scope of its business needs, it had a duty to bring these relevant concerns to FAC's attention and request the appropriate coverage.

As previously noted, the policy declaration clearly stated that the duplicate storage limit was set at $50,000. QCI received a renewal policy for more than five years reflecting this fact, but they failed to seek the additional coverage or notify FAC of the off-site storage of their electronic data. It is our opinion that the storage off-site in and of itself was not the concern. The concern was the limit of $50,000. QCI was best able to evaluate whether that limit was too much or too small.

We conclude that FAC's exercise of good faith and reasonable diligence was satisfied in obtaining the insurance as requested by QCI over the years, but there was no duty to advise QCI, without them furnishing additional and pertinent information, that additional coverage was needed. As such, we find no evidence from which reasonable minds could conclude that the relationship between QCI and FAC was anything other than an ordinary business relationship between an insurance agent and a client. Thus, we find no error in

> the trial court's entry of summary judgment in favor of FAC on QCI's breach of fiduciary duty claim.

See also Stuart v. National Indemnity Co., 7 Ohio App.3d 63, 454 N.E.2d 158 (8th Dist. 1982); *First Catholic Slovak Union v. Buckeye Union Insurance Co.*, 27 Ohio App.3d 169, 499 N.E.2d 1303 (8 Dist. 1986); *Nielsen Enterprises, Inc. v. Insurance Unlimited Agency, Inc.*, 10th Dist. No. 85AP-781, 1986 WL 5411 (May 8, 1986); *Craggett v. Adell Ins. Agency*, 92 Ohio App.3d 443, 635 N.E.2d 1326 (8th Dist. 1993); *Lu-An-Do, Inc. v. Kloots*, 131 Ohio App.3d 71, 75, 721 N.E.2d 507 (5th Dist. 1999); *Fry v. Walters & Peck Agency, Inc.*, 141 Ohio App.3d 303, 750 N.E.2d 1194 (6th Dist. 2001); and *Island House Inn, Inc. v. State Auto Ins.*, 150 Ohio App.3d 522, 2002-Ohio-7107, 782 N.E.2d 156 (6th Dist. 2002).

Oklahoma – Order Taker Standard

See Cosper v. Farmers Ins. Co., 2013 OK CIV APP 78, ¶¶ 8-9, 309 P.3d 147, 149 (Okla. Ct. App. 2013):

> However, "[i]nsurance companies and their agents do not have a duty to advise an insured with respect to his insurance needs." *Rotan v. Farmers Ins. Group of Companies*, 2004 OK CIV APP 11, ¶ 2, 83 P.3d 894, 895, *citing Mueggenborg v. Ellis*, 2002 OK CIV APP 88, ¶ 6, 55 P.3d 452, 453. The Supreme Court has held an insurer was under no statutory duty to explain uninsured motorist coverage to its insureds. *Silver v. Slusher*, 1988 OK 53, ¶ 7, fn. 11, 770 P.2d 878, 882.
>
> Defendants did not fail to procure insurance for Plaintiffs, and we decline to extend *Swickey* and impose a duty upon an insurer to provide an "adequate amount" of coverage. Plaintiffs did not allege that they requested a specific coverage limit and Defendants disregarded the request and issued a policy in some other amount. We further find nothing in the record shows Ott played any part in setting a coverage limit.

See also Smith v. Allstate Vehicle & Prop. Ins. Co., No. CIV-14-0018-HE, 2014 WL 1382488, at *2 (W.D. Okla. Apr. 8, 2014):

> The Oklahoma Court of Civil Appeals held in *Swickey v. Silvey Cos.*, 979 P.2d 266, 269 (Okla.Civ.App.1999) that "[a]n agent has the duty to act in good faith and use reasonable care, skill and diligence in the procurement of insurance and an agent is liable to the insured if, by the agent's fault, insurance is not procured as promised and the insured suffers a loss." However, the Oklahoma appellate court subsequently "decline[d] to extend *Swickey* and impose a duty upon an insurer to provide an 'adequate amount' of coverage," when an insurance company and its agent "did not fail to procure insurance for Plaintiffs." *Cosper v. Farmers Ins. Co.*, 309 P.3d 147, 149 (Okla.Civ.App.2013). In reaching that conclusion in *Cosper*, the court noted that the plaintiffs "did not allege that they requested a specific coverage limit and Defendants disregarded the request and issued a policy in some other amount." *Id.* The *Cosper* court also determined that " '[i]nsurance companies and their agents do not have a duty to advise an insured with respect to his insurance needs .' " *Id*. (quoting *Rotan v. Farmers Ins. Group of Cos.*, 83 P .3d 894, 895 (Okla.Civ.App.2004)).

See also Swickey v. Silvey Cos., 979 P.2d 266, 269 (Okla.Civ.App.1999); *Mueggenborg v. Ellis*, 55 P.3d 425 (Ok. Ct. App. 2002); and *Rotan v. Farmers Ins. Group*, 83 P.2d 894 (Okla.Ct.App. 2003).

Oregon – Order Taker Standard (likely)

See Lewis-Williamson v. Grange Mut. Ins. Co., 179 Or. App. 491, 494, 39 P.3d 947, 949 (2002) (emphasis added):

> Specifically, an insurance agent acting as an agent for the insured owes a general duty to exercise reasonable skill and care in providing the **requested insurance**. *See Joseph Forest Products v. Pratt*, 278 Or. 477, 480, 564 P.2d 1027 (1977), quoting 16 Appleman, Insurance Law and Practice § 8841, at 510–14 (1968); *Hamacher v. Tumy et al.*, 222 Or. 341, 347, 352 P.2d 493 (1960); *see also Nofziger v. Kentucky Central Life Insurance Co.*, 91 Or.App. 633, 639, 758 P.2d 348, rev. den. 306 Or. 527, 761 P.2d 928 (1988); *Albany Ins. Co. v. Rose–Tillmann, Inc.*, 883 F.Supp. 1459 (D.Or.1995).

Pennsylvania – Heightened Duty to Advise

See Swantek v. Prudential Prop. & Cas. Ins. Co., 48 Pa. D. & C.3d 42, 47 (Pa. Com. Pl. 1988):

> Our appellate courts have held that the focal point of an insurance transaction is the reasonable expectation of the insured. *See State Auto Insurance Assoc. v. Anderson*, 365 Pa. Super. 85, 528 A.2d 1374, (1987) *citing to Collister v. Nationwide Life Insurance Co.*, 479 Pa. 579, 388 A.2d 1346 (1978). Those expectations are, in large part, created and perpetuated by the complexity of the insurance industry itself. *Id*. This concept **underscores the reason for recognizing a duty to advise on behalf of an insurance agent**.
>
> As did the court in Peterson, this court now concludes that an insurance agent is held to the standard of care found in section 299 of the Restatement (Second) of Torts, and given that standard **the agent has a correlative duty to advise insureds of the availability of other types of insurance benefits**. Moreover, a cause of action exists where the agent allegedly breaches this duty. A finding that the plaintiffs herein have put forth a valid cause of action does not end the court's present inquiry.

See also Decker v. Nationwide Ins. Co., 83 Pa. D. & C.4th 375, 380–81 (Com. Pl. 2007).

Rhode Island – Order Taker Standard (likely) - insufficient case law

See Affleck v. Kean, 50 R.I. 405, 148 A. 324, 325 (1929):

> An insurance broker must obey the instructions given by his principal, 32 C. J. 1087, and, if he agrees to procure insurance and fails to do so, he is liable to his principal for the damage sustained by reason of the want of such insurance. *Milwaukee Bedding Co. v.*

> *Graebner*, 182 Wis. 171, 196 N. W. 533; *Journal Co. v. Gen. Acc. Fire & Life As. Co.*, 188 Wis. 140, 205 N. W. 800; *Everett v. O'Leary*, 90 Minn. 154, 95 N. W. 901; *Cass v. Lord*, 236 Mass. 430, 128 N. E. 716*; Elam, Appt., v. Smithdeal Realty & Ins. Co.*, 182 N. C. 599, 109 S. E. 632, 18 A. L. R. 1210 and note, 1214.

See also Kenney Mfg. Co. v. Starkweather & Shepley, Inc., 643 A.2d 203, 208 (R.I. 1994).

South Carolina – Order Taker Standard

See Trotter v. State Farm Mut. Auto. Ins. Co., 297 S.C. 465, 471–72, 377 S.E.2d 343, 347–48 (Ct. App. 1988):

> Generally, an insurer and its agents owe no duty to advise an insured. *Nowell v. Dawn–Leavitt Agency, Inc.*, 127 Ariz. 48, 617 P.2d 1164 (App.1980). If the agent, nevertheless, undertakes to advise the insured, he must exercise due care in giving advice. *See Riddle–Duckworth, Inc. v. Sullivan*, 253 S.C. 411, 171 S.E.2d 486 (1969).
>
> An insurer may assume a duty to advise an insured in one of two ways: (1) he may expressly undertake to advise the insured; or (2) he may impliedly undertake to advise the insured. *See Bicknell, Inc. v. Havlin*, 9 Mass.App. 497, 402 N.E.2d 116 (1980); *Precision Castparts Corp. v. Johnson & Higgins of Oregon, Inc.*, 44 Or.App. 739, 607 P.2d 763 (1980); *Northern Assurance Co. of Am. v. Stan–Ann Oil Co., Inc.*, 603 S.W.2d 218 (Tex.Civ.App.1979). It is the insured, however, who bears the burden of proving the undertaking. *See Riddle–Duckworth, Inc. v. Sullivan, supra*.
>
> An implied undertaking may be shown if: (1) the agent received consideration beyond a mere payment of the premium, *Nowell v. Dawn–Leavitt Agency, Inc., supra*; (2) the insured made a clear request for advice, *see Precision Castparts Corp. v. Johnson & Higgins of Oregon, Inc., supra*; or (3) there is a course of dealing over an extended period of time which would put an objectively reasonable insurance agent on notice that his advice is being sought and relied on. *See Nowell v. Dawn–Leavitt Agency, Inc., supra; Northern Assurance Co. of Am. v. Stan–Ann Oil Co., Inc., supra*.
>
> It was incumbent on Trotter to prove Ledford agreed to advise him about his insurance needs. Courts cannot create contracts for the parties. There must be a clear oral or written agreement for a court to enforce. Trotter may not seek, after the fact, to have a court or jury create an undertaking favorable to him, if the parties themselves did not enter such an agreement. *See Chapman v. Willia*ms, 112 S.C. 402, 100 S.E. 360 (1919); *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (1958); *Texcon, Inc. v. Anderson Aviation, Inc.*, 284 S.C. 307, 326 S.E.2d 168 (Ct.App.1985).
>
> Trotter presented no evidence to show that either State Farm or Ledford expressly undertook to advise him. He testified that he saw several State Farm advertisements which in effect said that State Farm's agents are well trained and highly qualified individuals, who will advise people with respect to their insurance needs. These advertisements, however, do not amount to an express undertaking. Ordinarily, an advertisement is a mere invitation to the public to contact the advertiser and request its

> services, as opposed to an offer to perform those services. *See Georgian Co. v. Bloom*, 27 Ga.App. 468, 108 S.E. 813 (1921). State Farm's advertisements were nothing more than invitations to the public.
>
> There was likewise no evidence of an implied undertaking. Trotter did not contend that State Farm or Ledford received any consideration beyond the payment of premiums from which an implied undertaking could arise. Moreover, he produced no evidence to show he made a clear request which would put Ledford on notice that his advice was being sought and relied on. A request for "full coverage," "the best policy," or similar expressions does not place an insurance agent under a duty to determine the insured's full insurance needs, to advise the insured about coverage, or to use his discretion and expertise to determine what coverage the insured should purchase. *See Ethridge v. Assoc. Mut., Inc.*, 160 Ga.App. 687, 288 S.E.2d 58 (1981) ("full coverage"); *Nowell v. Dawn–Leavitt Agency, Inc., supra* ("the best policy").

See also Houck v. State Farm, 620 S.E.2d 326, 329 (S.C. 2005); *Riddle-Duckworth, Inc. v. Sulliv*an, 171 S.E.2d 486 (S.C. 1969); *Sullivan Co., Inc. v. New Swirl, Inc.*, 437 S.E.2d 30 (S.C. 1993); and *Fowler v. Hunter*, 668 S.E.2d 803 (S.C. Ct. App.) (affd. by 697 S.E.2d 531 (S.C. 2010).

South Dakota – Order Taker Standard

See City of Colton v. Schwebach, 1997 S.D. 4, ¶ 10, 557 N.W.2d 769, 771 (1997):

> The duty of an insurance agent was discussed by this court in both *Fleming v. Torrey*, 273 N.W.2d 169, 170 (S.D.1978), and *Trammell v. Prairie States Ins. Co.*, 473 N.W.2d 460, 462 (S.D.1991). The duty consists of "procur[ing] insurance of the kind and with the provisions specified by the insured." *Fleming*, 273 N.W.2d at 170. The court in *Trammell* added that an insurance "agent had a duty to obey [client's] instructions in good faith and with reasonable professional skill. [The agent] had no duty to go beyond this standard and ask [client] further questions if [client] appeared clear about what he wanted." 473 N.W.2d at 462.

See also Cole v. Wellmark of S.D., Inc., 2009 S.D. 108, ¶ 34, 776 N.W.2d 240, 251 (2009); *Rumpza v. Larsen*, 1996 S.D. 87, 551 N.W.2d 810; *Trammel v. Prairie States Insurance Company*, 473 N.W.2d 460 (S.D.1991); *Ward v. Lange*, 553 N.W.2d 246, 250 (S.D. 1996); *Fleming v. Torrey*, 273 N.W.2d 169 (S.D. 1978); and *Feldmeyer v. Engelhart*, 54 S.D. 81, 222 N.W. 598, 599 (1928).

Tennessee – Order Taker Standard

See Weiss v. State Farm Fire & Cas. Co., 107 S.W.3d 503, 506 (Tenn. Ct. App. 2001):

> The Weisses ask this court on appeal whether State Farm and Mr. Brooks had a duty to make sure Mrs. Weiss understood her insurance coverage and whether the failure to advise her of her level of UM coverage was a cause in fact of her damages. According to Tennessee law, unless there exists an agreement creating continuing responsibilities, an insurance agent's obligation to a client ends when the agent obtains the insurance asked

> for by the client. See 16 Tenn. Juris. Insurance § 8 (2001) (citing *Quintana v. Tennessee Farmers Mut. Ins. Co.*, 774 S.W.2d 630 (Tenn.Ct.App.1989)).

See also Barrick v. State Farm Mut. Auto. Ins. Co., No. M2013-01773-COA-R3CV, 2014 WL 2970466, at *3 (Tenn. Ct. App. June 27, 2014):

> The trial court specified two undisputed facts in its order for which it based its decision to grant summary judgment in favor of State Farm and Mr. Jones. First, over the period of 20 or 25 years, the Barricks procured State Farm Insurance from Mr. Jones continuously. Second, the Barricks received copies of their insurance policies, declarations pages, and renewal notices during this time period. Correctly citing *Weiss v. State Farm Fire & Casualty Company*, 107 S.W.3d 503, 506 (Tenn.Ct.App.2001) and *Quintata v. Tennessee Farmer's Mutual Ins. Co.*, 774 S.W.2d 630 (Tenn.Ct.App.1989), the court concluded State Farm and Mr. Jones did not owe a duty to the Barricks, as an agent's duty ends when the agent obtains insurance for plaintiffs and properly provides copies, notices, and declarations.

See also Bell v. Wood Ins. Agency, 829 S.W.2d 153, 154 (Tenn. Ct. App. 1992):

> It is the universal rule that an agent or broker of insurance who is compensated for his services and undertakes to procure insurance for another and unjustifiably fails, will be held liable for any damage resulting. *Massengale v. Hicks*, 639 S.W.2d 659 (Tenn.App.1982). In a recent case where an insurance agent promised full coverage for an insured's business and obtained a policy providing less than full coverage, the Supreme Court in *Bill Brown Construction Co. v. Glen Falls Insurance Co.*, 818 S.W.2d 1 (Tenn.1991), held:
>
> "We think it matters not whether the insurer places limitations on coverage in the insuring or exclusionary clauses of its own contract: reasonable reliance to the detriment of the insured has precisely the same result." 818 S.W.2d at 11.
>
> Plaintiff repeatedly advised Williamson that coverage was needed for the entire inventory and the requirement was re-emphasized when the contract was renewed. The Chancellor in examining the policy found the numbers confusing, and was convinced that Mrs. Bell understood that she had $30,000.00 coverage for theft.

See also Morrison v. Allen, 338 S.W.3d 417, 426 (Tenn. 2011); *Allstate Insurance Company v. Tarrant*, 363 S.W.3d 508 (Tenn. 2012); *Wood v. Newman, Hayes & Dixon Insurance Agency*, 905 S.W.2d 559 (Tenn. 1995); *Ralph v. Pipkin*, 183 S.W.3d 362 (Tenn. App. 2005) perm. app. denied December 5, 2005; *Massengale v. Hicks*, 639 S.W.2d 659 (Tenn. App.), perm. app. denied October 4, 1982; Magnavox Company of Tennessee v. Boles & Hite Construction Company, 585 S.W.2d 622 (Tenn. App. 1979) cert. denied July 30, 1979; and *Sears, Roebuck & Co. v. W.H. Strey*, 512 F.Supp. 540 (E.D. Tenn. 1981).

Texas – Order Taker Standard

See Critchfield v. Smith, 2004 WL 948642, slip op. at 3, (Tex.App.-Tyler April 30, 2004, pet. denied):

> In Texas, an insurance agent owes the following common-law duties to a client when procuring insurance: 1) to use reasonable diligence in attempting to place the requested insurance, and 2) to inform the client promptly if unable to do so. *Moore v. Whitney-Vaky Ins. Agency*, 966 S.W.2d 690, 692 (Tex.App.-San Antonio 1998, no pet.) (citing *May v. United Servs.Ass'n of America*, 844 S.W.2d 666, 669 (Tex.1992)). No legal duty exists on the part of an insurance agent to extend the insurance protection of his customer merely because the agent has knowledge of the need for additional insurance of that customer, especially in the absence of evidence of prior dealings where the agent customarily has taken care of his customer's needs without consulting him. *Pickens v. Texas Farm Bureau Ins. Cos.*, 836 S.W.2d 803, 805 (Tex.App.-Amarillo 1992, no writ) (citing *McCall v. Marshall*, 398 S.W .2d 106, 109 (Tex.1965)).

See also May v. United Servs. Ass'n of Am., 844 S.W.2d 666, 672–73 (Tex. 1992):

> Unquestionably, Wiley could have done a better job by ascertaining whether the Mays would have preferred to pay a higher premium for a nongroup policy without a comparable termination provision.
>
> However, under the facts of this case, we do not believe that this failure constitutes any evidence of negligence. There is no testimony that Faith May ever asked to see different policies or even expressed any dissatisfaction with the Double Eagle. Unlike the Sobotor customer, whose request for the "best available" policy implies a comparison to obtain the most complete coverage and makes the agent's failure to advise of policies with higher limits a material nondisclosure, the Mays conveyed no such wish to Wiley.
>
> Therefore, we hold that there is no evidence to support the Mays' first negligence theory.

See also Choucroun v. Sol L. Wisenberg Ins. Agency-Life & Health Div., Inc., No. 01-03-00637-CV, 2004 WL 2823147, at *7 (Tex. App. Dec. 9, 2004):

> In his petition, Choucroun alleged that "[a]s Plaintiffs' longstanding insurance agent, [WIA] had duties of trust and loyalty to Plaintiffs by [WIA]; they had a special relationship and fiduciary duties to Plaintiffs...." In its motion for summary judgment, WIA contended that it had no "special relationship" with Choucroun giving rise to a duty of good faith and fair dealing. We agree for two reasons.
>
> First, an insurance carrier owes its insured the duty of good faith and fair dealing because the contract between them is the result of unequal bargaining power and, by its nature, allows unscrupulous insurers to take advantage of their insured. *See Natividad v. Alexis*, 875 S.W.2d 695, 698 (Tex.1994). However, the "special relationship" created does not extend to those who are not parties to the insurance contract. *Id.*
>
> Second, there is no evidence in this case of a contract giving rise to a special relationship. Even though WIA was Choucroun's "long-standing insurance agent," there is no evidence in the record to warrant the extension of WIA's duties beyond that of any other insurance agent.

> In *Moore*, the plaintiff urged the court to extend his agent's liability beyond affirmative misrepresentations to the failure to disclose policy limitations. The court noted that, even if it were to extend the common-law duties of an agent beyond affirmative misrepresentations, it would not do so in that case because there was no evidence of any special relationship between *Moore* and his agent. 966 S.W.2d at 692. Specifically, the court noted that Moore could not recall discussing the contents of the policy with the agent and had merely renewed the policy year-to-year. *Id*.

See also Heritage Manor v. Peterson, 677 S.W.2d 689 (Tex. Civ. App. – Fort Worth 1984, writ ref'd n.r.e.); *Kitching v. Zamora*, 695 S.W.2d 553, 554 (Tex. 1985); *Higginbotham & Associates, Inc. v. Greer*, 738 S.W.2d 45 (Tex. App.–Texarkana 1987, writ denied); *Moore v. Whitney-Vaky Ins. Agency*, 966 S.W.2d 690 (Tex.App.–San Antonio 1998, no pet.); and *McCall v. Marshall* 398 S.W.2d 106, 109 (Tex. 1965).

Utah – Order Taker Standard

See Asael Farr & Sons Co. v. Truck Ins. Exch., 2008 UT App 315, ¶¶ 29-32, 193 P.3d 650, 660–61 (Agent did not owe a duty to procure insurance more than insured requested or to analyze insured's comprehensive needs).

See also Youngblood v. Auto-Owners, 2005 UT App 154, ¶ 21, 111 P.3d 829, aff'd 2007 UT 28, 158 P.3d 1088; and *Harris v. Albrecht*, 2004 UT 13, ¶ 30, 86 P.3d 728.

Vermont – Order Taker Standard

See Booska v. Hubbard Ins. Agency, Inc., 160 Vt. 305, 309–10, 627 A.2d 333, 335 (1993):

> The grant of summary judgment in favor of Hubbard and Wheeling was not error because neither the agency nor its employee had a duty to inquire about special circumstances within the insurance purchaser's control that might affect the quality or degree of protection available under a policy. Plaintiffs' argument makes clear that they expected defendant Wheeling to have foreseen the extent of the renovations, to have determined that the manner in which the renovations were conducted would at least temporarily reduce the amount recoverable under the policy, and to have foreseen that the result (actual-value coverage of the house during renovation) was one which, though not contrary to law or public policy, was such an unreasonable risk that it necessitated a special warning.
>
> Such far-reaching expectations would have imposed on Wheeling, not the duty of a reasonable insurance agent, but that of a soothsayer. The trial court correctly ruled that the duty of Hubbard and Wheeling was rather "to use reasonable *310 care and diligence to procure insurance that will meet the needs and wishes of the prospective insured, as stated by the insured." *Rocque v. Co-Operative Fire Ins. Ass'n*, 140 Vt. 321, 326, 438 A.2d 383, 386 (1981). Once a policy is procured as requested and is consistent with the applicable standard of care, no further duty is owed to the insured by the agent with respect to this insurance. *Id*. at 326-27, 438 A.2d at 386.

> Put another way, if we take all of plaintiffs' factual assertions about the length of time they were served by Hubbard and Wheeling as true, these circumstances do not support the legal theory of a "higher duty," in effect a fiduciary duty, between the agent and the purchaser.

See also Corbeil v. Pruco Life Ins. Co., 512 F. App'x 36, 38 (2d Cir. 2013); *Rocque v. Co-Operative Fire Ins. Ass 'n*, 140 Vt. 321, 326, 438 A.2d 383, 386 (1981); *Hill v. Grandey*, 132 Vt. 460, 321 A.2d 28 (1974); and Dodge v. Aetna Cas. & Sur. Co., 127 Vt. 409, 411, 250 A.2d 742, 744 (1969)

Virginia – Strict Breach of Contact Standard – No claims for negligence or breach of fiduciary duty.

See Filak v. George, 267 Va. 612, 618–19, 594 S.E.2d 610, 613–14 (2004):

> Further, contrary to the plaintiffs' assertion, George did not have a common law duty to the plaintiffs arising out of the parties' dealings. The law of torts provides redress only for the violation of certain common law and statutory duties involving the safety of persons and property, which are imposed to protect the broad interests of society. See Ward, 246 Va. at 324, 435 S.E.2d at 631; Sensenbrenner, 236 Va. at 425, 374 S.E.2d at 58; Blake Constr. Co. v. **614 Alley, 233 Va. 31, 34–35, 353 S.E.2d 724, 726 (1987); Kamlar Corp. v. Haley, 224 Va. 699, 706, 299 S.E.2d 514, 517 (1983). Therefore, we hold that the plaintiffs did not assert a valid claim of constructive fraud against George because whatever duties George may have assumed arose solely from the parties' alleged oral contract

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Washington – Order Taker Standard

See Lipscomb v. Farmers Ins. Co. of Washington, 142 Wash. App. 20, 28, 174 P.3d 1182, 1186 (2007) (footnotes and quotations omitted):

> For a claim of negligence, the plaintiff must establish duty, breach, causation, and damages. The existence of a duty is a question of law for the court, to be considered in light of public policy considerations. In the insurance context, an agent does not have a duty to procure a policy that affords the client complete liability protection. But such a duty may arise when there is a special relationship between the agent and the insured.

See also McClammy v. Cole, 158 Wash. App. 769, 773–74, 243 P.3d 932, 934 (2010):

> In a negligence action, a determination of whether a legal duty exists is initially a question of law for the court." *Gates v. Logan*, 71 Wash.App. 673, 676, 862 P.2d 134 (1993). Ordinarily, an insurance agent does not have a duty to advise the insureds as to the adequacy of their insurance policy coverage. *Suter v. Virgil R. Lee & Son, Inc.*, 51 Wash.App. 524, 528, 754 P.2d 155 (1988). " '[T]he general duty of [reasonable] care which an insurance agent owes his client does not include the obligation to procure a policy affording the client complete liability protection.' " *Id.* (*quoting Jones v. Grewe*,

> 189 Cal.App.3d 950, 956, 234 Cal.Rptr. 717 (1987)). But, where there is a special relationship between the agent and the insured, such duty may arise. *Gates*, 71 Wash.App. at 677, 862 P.2d 134; *Lipscomb*, 142 Wash.App. at 28, 174 P.3d 1182. Absent this special relationship, "an insurance agent has no obligation to recommend ... liability limits higher than those selected by the insured." *Gates*, 71 Wash.App. at 678, 862 P.2d 134.

See also Gates v. Logan, 71 Wash. App. 673, 678, 862 P.2d 134, 136 (1993):

> Ordinarily the insured knows the extent of his personal assets and ability to pay increased premiums better than the insurance agent. *Suter*, 51 Wash.App. at 528, 754 P.2d 155. Another policy reason is that it is unrealistic to expect an agent to advise an insured as to every possible insurance option, a logical requirement if there is a general duty to advise as to specific policy limits. *See Nelson v. Davidson*, 155 Wis.2d 674, 456 N.W.2d 343 (1990).
>
> * * *
>
> Mere knowledge of the insureds' annual income or notion as to their net worth does not constitute a "special circumstance" which imposes a duty on an insurance agent to advise as to increased policy limits. The amount of protection an insured wishes to obtain against any specific risk concerns the allocation of personal resources. It is a matter uniquely within the province of the insured.

See also Hellbaum v. Burwell and Morford, 1 Wn. App. 694, 463 P.2d 225 (1969); *Bates v. Bowles White & Co.*, 56 Wn.2d 374, 353 P.2d 663 (1960); *American States Ins. Co. v. Breesnee*, 49 Wn. App. 642, 745 P.2d 518 (1987); *Suter v. Virgil R. Lee & Son, Inc.*, 51 Wn. App 524, 754 P.2d 155 (1988); *Shows v. Pemberton*, 73 Wn. App. 107, 868 P.2d 164 (1994); *American Commerce Ins. Co. v. Ens*ley, 153 Wn. App. 31, 220 P.3d 215 (2009); *AAS-DMP Mgmt., L.P. Liquidating Trust v. Accordia Northwest, Inc.*, 115 Wn. App. 833, 63 P.3d 860 (2003); *Shah v. Allstate Ins. Co.*, 130 Wn. App. 74, 121 P.3d 1204 (2005); and *Peterson v. Big Bend Ins. Agency, Inc.*, 150 Wn. App. 504, 202 P.3d 372 (2009).

West Virginia – Order Taker Standard [Arguably No Special Relationship Exclusion]

See Aldridge v. Highland Ins. Co., No. 15-0658, 2016 WL 3369562, at *5 (W. Va. June 17, 2016), "We agree with the circuit court's conclusion that this Court has never recognized an insurance agent's 'duty to advise' an insured about coverage nor the 'special relationship' exception that would trigger such a duty."

See also Wilson Works, Inc. v. Great Am. Ins. Grp., No. 1:11-CV-85, 2012 WL 12960778, at *4 (N.D.W. Va. June 28, 2012); *Hill, Peterson, Carper, Bee & Deitzler v. XL Specialty Ins. Co.*, 261 F. Supp.2d 546 (S.D.W. Va. 2003); *Am. Equity Ins. Co. v. Lignetics, Inc.*, 284 F. Supp. 2d 399 (N.D.W. Va. 2003); and *American States Ins. Co. v. Surbaugh*, 745 S.E.2d 179 (W. Va. 2013).

Wisconsin – Order Taker Standard

See Poluk v. J.N. Manson Agency, Inc., 2002 WI App 286, ¶ 13, 258 Wis. 2d 725, 733–34, 653 N.W.2d 905, 909:

> We first address Manson's contention it owed no duty to the Estate. In order to sustain a claim for negligence, a plaintiff must show a duty owed by the defendant. *Lenz Sales & Serv. v. Wilson Mut. Ins. Co.*, 175 Wis.2d 249, 254, 499 N.W.2d 229 (Ct.App.1993). The question of an insurance agent's duty to an insured presents an issue of law we decide de novo. *Id*. An insurance agent has the duty to act in good faith and carry out the insured's instructions. *Nelson v. Davidson*, 155 Wis.2d 674, 681–82, 456 N.W.2d 343 (1990). This duty does not, however, impose the affirmative obligation, absent special circumstances, to advise a client regarding the availability or adequacy of coverage. *Id*. at 685, 456 N.W.2d 343.

See also Meyer v. Norgaard, 160 Wis.2d 794, 467 N.W.2d 141, 142 (Ct.App.1991) (the nature of an insurance agent's duty does not impose upon the agent the affirmative obligation, absent special circumstances, to inform about or recommend policy limits higher than those selected by the insured).

See also Nelson v. Davidson, 155 Wis.2d 674, 456 N.W.2d 343, 344 (1990); *Tackes v. Milwaukee Carpenters District Council Health Fund*, 164 Wis. 2d 707, 717, 476 N.W.2d 311 (Ct. App. 1991); *Lenz Sales & Service, Inc. v. Wilson*, 175 Wis. 2d 249, 257, 499 N.W.2d 229 (Ct. App. 1993); *Appleton Chinese Food Service, Inc. v. Murken Insurance, Inc.*, 185 Wis. 2d 791, 805, 519 N.W.2d 674 (Ct. App. 1994); and *Avery v. Diedrich*, 2007 WI 80, 301 Wis. 2d 693, 734 N.W.2d 159, 164.

Wyoming – Order Taker Standard

See Gordon v. Spectrum, Inc., 981 P.2d 488, 492 (Wyo. 1999):

> Wyoming recognizes that insurance agents have a general duty to act reasonably toward their insureds. If an agent fails to use reasonable care, the agent may be liable for negligence and any resulting damages. *Arrow Construction Co., Inc. v. Camp*, 827 P.2d 378, 381 (Wyo.1992); *Hursh Agency, Inc. v. Wigwam Homes, Inc.*, 664 P.2d 27, 32 (Wyo.1983). This court, however, has never addressed the issue of whether an agent or a broker has an ongoing duty to advise. Other jurisdictions have held that after an insurance agent or broker has secured insurance coverage for an insured, an agent or a broker has no continuing duty to advise, counsel, or direct the insured's coverage and generally has no affirmative duty to uncover or give advice regarding possible gaps in coverage. *See Blonsky v. Allstate Ins. Co.*, 128 Misc.2d 981, 491 N.Y.S.2d 895, 897-98 (N.Y.1985); *Gabrielson v. Warnemunde*, 443 N.W.2d 540, 542 (Minn.1989).
>
> Despite that broad pronouncement, these courts recognize that an agent may have an increased duty to clients where a special relationship exists. *Blonsky v. Allstate Ins. Co.*, 491 N.Y.S.2d at 897; *Gabrielson v. Warnemunde*, 443 N.W.2d at 543-44; *Louwagie v. State Farm Fire & Cas. Co.*, 397 N.W.2d 567, 569-70 (Minn.App.1986). No one set of factors has emerged from the courts on the elements of a special relationship, yet there is agreement that the ordinary agent-insured relationship is not sufficient to constitute a

> special relationship which raises the agent's duty to a higher level. *Gabrielson v. Warnemunde*, 443 N.W.2d at 543, 545; *Nelson v. Davidson*, 155 Wis.2d 674, 456 N.W.2d 343, 346-47 (1990). Nucor directs us to no evidence showing the existence of anything other than an ordinary agent-insured relationship with its agent. Absent a special relationship, Nucor has failed to show that a genuine issue of material fact exists.

See also Hursh Agency, Inc. Wigwam Homes Inc., 664 P.2d 27, 32 (Wyo. 1983).

Recommendations to Prevent E&O Issues

It is recommended that agents: 1) use checklist and review sheets with their insurance customers; 2) perform regular thorough reviews with their insurance customers; 3) clearly document files; 4) use confirmation letters and emails; and 5) identify potentially problematic insurance customers. The upside of some these activities is that they often provide the agent with additional sales opportunities. In addition, if a potential E&O situation arises it is always a good idea to promptly contact your E&O carrier or legal counsel. Brownson Norby attorney Aaron Simon is always available to field your E&O questions and concerns.

Insurance Agent Standard of Care – 50 State Review

State	Standard	Other Considerations
Alabama	Order Taker Standard	
Alaska	Order Taker Standard	
Arizona	Case by Case Duty - No Standard Duty	
Arkansas	Order Taker Standard	
California	Order Taker Standard	
Colorado	Order Taker Standard	
Connecticut	Heightened Duty to Advise of "kind and extent of desired coverage"	
Delaware	Order Taker Standard	
Florida	Order Taker Plus – Sometimes Heightened Duty to Advise Included	
Georgia	Order Taker Plus – Sometimes Heightened Duty to Advise Included	
Hawaii	Heightened Duty to Advise Sometimes Imposed	
Idaho	Heightened Duty to Advise	
Illinois	Order Taker Standard	Common law duty codified by statute
Indiana	Order Taker Standard	
Iowa	Order Taker Standard	Common law duty codified by statute
Kanas	Order Taker Standard	
Kentucky	Order Taker Standard	
Louisiana	Order Taker Standard	
Maine	Order Taker Standard	
Maryland	Order Taker Standard	
Massachusetts	Order Taker Standard	
Michigan	Arguably Heightened Duty to Advise if Independent Insurance Agent (Not Captive)	Conflicting Case Law – Law not settled
Minnesota	Order Taker Standard	
Mississippi	Order Taker Standard	
Missouri	Order Taker Standard	
Montana	Order Taker Standard	
Nebraska	Order Taker Standard	
Nevada	Order Taker Standard	
New Hampshire	Order Taker Standard	
New Jersey	Order Taker Standard	
New Mexico	Order Taker Standard	limited case law
New York	Order Taker Standard	
North Carolina	Order Taker Standard	
North Dakota	Order Taker Standard	
Ohio	Order Taker Standard	

State	Standard	Other Considerations
Oklahoma	Order Taker Standard	
Oregon	Order Taker Standard (likely)	limited case law
Pennsylvania	Heightened Duty to Advise	
Rhode Island	Order Taker Standard (likely)	limited case law
South Carolina	Order Taker Standard	
South Dakota	Order Taker Standard	
Tennessee	Order Taker Standard	
Texas	Order Taker Standard	
Utah	Order Taker Standard	
Vermont	Order Taker Standard	
Virginia	Strictly Breach of Contract	
Washington	Order Taker Standard	
West Virginia	Order Taker Standard	Arguably No Special Relationship Exclusion
Wisconsin	Order Taker Standard	
Wyoming	Order Taker Standard	

41 States have the Order Taker standard, with most having special relationship exclusion.

Four States have automatic heightened duty applied (Connecticut, Idaho, Michigan, Pennsylvania).

Three States have middle of road sometimes automatic heightened duty applied (Florida, Georgia, and Hawaii).

Arizona is case by case duty and there is no standard duty.

Virginia is has a strictly breach of contract standard of care.