

Insurance Broker Owes No Duty to Advise Employer of Duty to Maintain Workers' Compensation Coverage, Nebraska Supreme Court Holds

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After an employee was injured during the course and scope of his employment, his employer notified its commercial insurer of his claim. The commercial lines policy included only commercial auto, commercial inland marine, and commercial general liability coverage. The insurer advised the employer it did not have workers' compensation coverage. The employee filed an action against his employer, alleging his employer was negligent for requiring him to drive a truck during a high-wind warning and for failing to carry workers' compensation insurance as required by Nebraska law. The employer settled the employee's suit and assigned to the employee its rights against its insurer and its broker. The employee then brought an action against the broker for failure to procure workers' compensation insurance and against the employer's insurer for denying coverage.

The employee alleged the broker was negligent in failing to procure workers' compensation insurance for his employer, failing to notify it of Nebraska's requirement for employers to carry workers' compensation insurance, and failing to warn the employer its commercial insurance did not cover injuries to its employees occurring in the scope of their employment. The trial court granted the broker's summary judgment. It found that though the employer requested the broker to procure a workers' compensation quote before the employee's accident, employer did not provide the requisite information to complete the quote until after the accident such that the broker owed no legal duty regarding workers' compensation coverage. The employee appealed.

On appeal, the Nebraska Supreme Court affirmed summary judgment in favor of the broker. The Court recognized an insurance agent or broker who agrees to obtain insurance for another – but negligently fails to do so – is liable for the damage proximately caused by such negligence. It also acknowledged an insured's duty to advise its agent regarding the desired insurance, including the limits of a policy, when it asks its agent to procure insurance. However, the Court noted an insurance agent has no duty to anticipate what coverage an insured should have. The Court reiterated prior precedent concluding "it may be good business for an insurance agent to make insurance coverage suggestions," the failure to volunteer information without evidence an agent had indeed agreed to provide such advice or that the insured was "reasonably led by the agent to believe he would receive advice," falls short of negligence. The employee attempted to rely on the distinction between an insurance agent and an insurance broker to argue the broker owed a duty to evaluate an insured's risks and advise the insured of such risks, including a duty to advise an employer to obtain workers' compensation coverage even when an insured made no such request.

The Court rejected the employee's arguments, concluding previous Nebraska decisions "have generally indicated an insurance intermediary owes a duty of reasonable care, whether the intermediary is an agent or broker," such that "the failure to volunteer information does not constitute either negligence or breach of contract for which an insurance agent or broker must answer in damages" without evidence the agent or broker agreed to provide advice or the insured was reasonably led by the agent to believe he would receive advice. The undisputed facts established the failures in the case rested on the employer when it did not seek workers' compensation insurance and did not timely provide payroll information to obtain a quote for such insurance. Because there was no agreement obligating the broker to advise the employer of its obligation to maintain workers' compensation insurance, the broker had no duty to advise the employer of its obligations. Thus, the Court concluded the broker breached no duty to the employer.

Case Citation: *Merrick v. Fischer, Rounds & Associates, Inc.*, 305 Neb. 230, 939 N.W.2d 795 (2020)