

Whose Duty is it to Exercise Ordinary Care Anyway? Yours, if You Hold a License to Sell Insurance in Illinois

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There's a case from 2015 that's worth looking at again for insurance agents in Illinois. This was the one where the Illinois Supreme Court decided that a person who has to be licensed to sell insurance in Illinois has a duty to "exercise ordinary care and skill" in renewing, procuring, binding, or placing coverage. The case was *Skaperdas v. Country Cas. Ins. Co.*, 28 N.E.3d 747 (Ill. 2015), and the background on what led to this key decision is discussed below.

A Fiancée's Expectation Unfulfilled?

Tom Lessaris, an insurance agent affiliated with Country Casualty Insurance Co., met with his customer Steven Skaperdas to discuss adding Skaperdas' fiancée Valerie Day to an auto policy as an additional driver. Lessaris procured the new policy but—unbeknownst to the couple—he failed to name Day as an additional insured. Lessaris' omission did not come to light until later, when a vehicle hit Day's son while he was riding his bike, and Day demanded a settlement from Country Casualty.

Skaperdas and Day filed a lawsuit against the insurance company and included a claim alleging Lessaris was negligent in failing to procure the coverage requested by Skaperdas. Part of that claim was an allegation Lessaris breached his duty to exercise ordinary care and skill in renewing, procuring, binding, and placing the coverage as required by an applicable Illinois statute. Lessaris moved to dismiss the claim, arguing he owed Skaperdas and Day no duty of care; the trial court agreed.

Not So Fast: The High Court Weighs In

Eventually the case reached the Illinois Supreme Court, which took a deep dive into the Illinois statute that Skaperdas and Day mentioned in their lawsuit (referred to as Section 2-2201). The key question was whether Lessaris indeed owed Skaperdas and Day a duty.

Answering this question came down to the statute's use of the term "insurance *producer*" rather than "*agent*" or "*broker*." The high court made it clear Illinois insurance law distinguishes between an "agent" and a "broker" in determining the duty of ordinary care and to whom it's owed. An "agent" owes a duty to his employer (but not the insured), while a "broker" has a higher standard to follow—he or she actually does owe a duty to the insured. But, as for what duty a "producer" owes an insured, the statute didn't provide a direct answer.

So the court in the end had to make a judgment call. (That's why they pay 'em the big bucks.) And as a matter of first impression, the court held that an agent is an "insurance producer" within the meaning of the statute—a statute that undeniably requires producers to exercise ordinary care in placing requested coverage.