



Insurance Agents & Brokers Errors & Omissions Mock Trial

Bushwood Country Club v.
Noonan's No Risk Insurance Agency

Louisiana & Mississippi Young Agents Conference

August 24, 2024

Royal Sonesta New Orleans





Noonan's No Risk Insurance Agency



Your business partner; we're so much more than an order taker
Serving our Customers for more than 20 years!



We partner with our clients to constantly check to see what you need

We ask all the right questions, so you don't have to

Insurance is hard to understand
Let us do it for you



Taxidermy by appointment

There's no coverage we haven't dabbled in!

Damage Calculation

<i>Policy limits</i>	<i>\$1,000,000</i>
<i>Building</i>	<i>\$500,000</i>
<i>Contents</i>	<i>\$250,000</i>
<i>Land</i>	<i>\$250,000</i>

Damages

<i>Building Replacement Cost</i>	<i>\$3,000,000</i>
<i>Less policy limit</i>	<i>- 500,000</i>
<i>Uncovered building loss</i>	<i>\$2,500,000</i>

<i>Contents Loss</i>	<i>\$ 500,000</i>
<i>Less policy limit</i>	<i>- 250,000</i>
<i>Uncovered contents loss</i>	<i>\$ 250,000</i>

Uncovered Webb contents loss *\$ 375,000*

Total Uncovered Loss

<i>Building</i>	<i>\$2,500,000</i>
<i>Contents</i>	<i>+ 250,000</i>
<i>Webb contents</i>	<i>+375,000</i>

Total Uncovered Loss

\$3,125,000

Areas of E&O Interest

- Things are done in haste.
- Agent does not require customer to provide information needed to obtain the correct insurance
- Customer does not complete or sign an application(s)
- No signed proposal/quote to confirm coverages to bind
- No signed declination of coverages offered and not bound
- Certificates of Insurance – agent and CSR take a lackadaisical attitude toward the issuance of COIs and rely on the intern to issue them.
- Agent does not regularly follow up with the customer to review insurance needs.
- Agent does not recognize changes in operations that should trigger question re: need for additional coverages and limits
- Customer does not review their policy.
- Customer does not advise agent of changes in operations of the gold club.
- Agency website language overstating services. Impact on Standard of Care.
- “Special Relationship” between agent/customer and impact on Standard of Care.

E&O Guardian Website – www.eoguardian.com

I'M HERE TO:



REPORT A CLAIM

Get guidance and resources on the claims reporting process.



RESEARCH

Dive into our publications, webinars, newsletters and other materials.



FIND AGENCY TOOLS

Get checklists, procedures manuals, disclaimers, letters and more.



VIEW CLAIMS DATA

Review data and learn common claims drivers you can easily avoid.



REDUCE MY PREMIUM

Find out how you can earn discounts on your agency's premium.



REVIEW STANDARD OF CARE

Learn about your legal standard of care and duty to advise.

Resources for Insureds & Best Practices

BIG **E&O**
RISK MANAGEMENT GUARDIAN

Search Website...

Find Agency Tools Learn Buy Insurance View Claims Data Reduce My Premium Standard of Care FAQs

FIND AGENCY TOOLS

A Quick Check-Up for Your Agency's Workflows and Procedures
Consistency in practices and procedures is a critical component in E&O claims prevention. Coverage checklists, disclaimers, sample procedures and sample customer letters are just some of the valuable tools you can utilize to help prevent claims in your agency.

MEMBER RESOURCES

- SAMPLE PROCEDURES MANUAL
- CHECKLISTS
- DECLINATION FORMS
- RECORDS RETENTION
- ACT SAMPLE PRIVACY STATEMENT

POLICYHOLDER RESOURCES

- DISCLAIMERS
- LETTERS
- AUDITING TOOLS

Agency Website Resources on E&O Guardian!!

- 30-minute recorded webinar
- One-Page overview on Dos and Don'ts
- White paper providing high level overview of website wording and lessons learned.
- Website wording guide offers examples of troublesome website phrasing and suggested replacement (SRCS Policyholders Only)
- Access through the "Downloads" page on Guardian



! YOUR WEBSITE SAYS WHAT?

How Your Agency's Online Presence Puts Your Business at Risk.

The Big "I" Professional Liability Risk Management team recently hosted Big "I" members for an exclusive, complimentary webinar series, "Your Website Says WHAT? How Your Agency's Online Presence Puts Your Business at Risk."

In concert with the webinars, a [website wording guide](#) and [white paper](#) were also developed. Access to these materials are an exclusive Swiss Re Corporate Solutions policyholder member benefit.

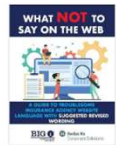
In addition, please review the [Big "I" Professional Liability website "dos and don'ts"](#) overview flyer to access quick tips to guide your thinking in the website area.



Our white paper provides a high level overview of the website wording topic as well as a summary of lessons learned from each focus area of our webinar series.




This one-page topic overview is your quickest route to the most essential information on what not to do with your agency website.



The website wording guide offers myriad examples of troublesome website phrasing and suggested replacement wording. (*Swiss Re policyholders only)

Standard of Care

INSURANCE PRODUCERS' DUTY TO ADVISE



Louisiana

No affirmative duty to advise absent a special relationship.

COMMENT

In Louisiana, an insurance producer who undertakes to procure insurance for the client owes an obligation to the client to use reasonable diligence in attempting to procure the requested coverage and to promptly notify the client if he fails to obtain the requested insurance. *Karim v. St. Paul Fire & Marine Ins. Co.*, 281 So. 2d 728, 730 (La. 1973).

There is no affirmative duty to advise whether the client has procured the correct amount or type of insurance coverage. *Isidore Newman Sch. v. J. Everett Estes, Inc.*, 42 So. 3d 352, 353 (La. 2010). "It is the insurer's responsibility to request the type of insurance coverage, and the amount of coverage needed. It is not the agent's obligation to spontaneously or affirmatively identify the scope or the amount of insurance coverage the client needs." *Id.* at 359; see also *Heidingsfelder v. Hibernia Ins., LLC*, 25 So. 3d 970, 978 (La. Ct. App. 2009) ("[I]nsurance agents do not have an independent duty to identify their clients' needs and to advise them regarding whether they may be underinsured."); *Dupont Bldg. Ins. v. Wright & Pevry Ins.*, 85 So.3d 1263, 1267 (La. Ct. App. 2012) (stating it's the insured's responsibility to request the amount and type of coverage needed and to read the policy once it's issued).

However, an insurance producer's duty to his client may be extended depending on how the producer holds herself out or the existence of a special relationship and agreements between the producer and client. *Graves v. State Farm Mut. Auto. Ins. Co.*, 821 So. 2d 709, 723 (La. Ct. App. 2002); *Bredt Coaste Co. v. Thomas, Furr & Reeves Agency, Inc.*, 852 So.2d 1151, 1155 (La. Ct. App. 2003).

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INSURANCE PRODUCERS' DUTY TO ADVISE



Mississippi

No affirmative duty to advise.

COMMENT

"In Mississippi, the purchase of insurance is deemed to be an arm's length transaction." *Langston v. Republic*, 820 So.2d 752, 756 (Miss. Ct. App. 2002) (noting the purchase of insurance does not give rise to any special relationship).

Insurance producers must use the degree of diligence and care that a reasonably prudent person would exercise. *Mindino v. Schusid*, 52 So.3d 1154, 1162 (Miss. 2010); see also *Worldwide Mach. Sales, Inc. v. Bt. Cent. R.R.*, 26 F. Supp. 2d 900, 903 (S.D. Miss. 1998) (noting insurance producers have a general duty to exercise good faith and reasonable diligence to procure coverage on the best terms they can obtain and must faithfully carry out the instructions given him by the insured).

Insurance producers do not have an affirmative duty to advise insureds regarding their coverage needs, but if they do offer advice to insureds, they have a duty to exercise reasonable care in doing so. *Mindino*, 52 So.3d at 1163.

An insured is charged with the knowledge of the terms of the policy regardless of whether the insured read the policy. *Id.* at 1162-63.

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Any questions?



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