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## Agents & Brokers

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### Insurance Purchaser Has Burden of Proving Existence of Expanded Agency Agreement Requiring Agent to Advise about Need to Procure Insurance

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*Purchaser Failed to Raise Triable Issue of Fact Regarding Existence of Agreement*

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*Merriam v. Farm Bureau Insurance*, 793 N.W.2d 520 (Iowa 2011)

#### Case at a Glance

Under Iowa law, an insurance agent's only established duty is to procure explicitly requested insurance. An agent may assume an expanded duty to advise in certain circumstances, but the agent's superior knowledge of a customer's insurance needs is not sufficient, by itself, to give rise to triable issues of fact regarding the existence of an expanded duty.

#### Summary of Decision

Plaintiffs, Tim and Christine Merriam, sued one of their insurance agents for breaching his duty of care, as a reasonably prudent insurance agent, to recommend that Tim, a self-employed, independent trucker, purchase a self-employed workers compensation policy. In addition, the plaintiffs sued Farm Bureau Insurance Company (FB) for vicarious liability, since the agent was an independent contractor for FB.

The relevant facts were undisputed. In the late 1990s, Tim became a self-employed, independent truck driver. Previously, he had always been an employee and was covered under whatever company workers' compensation insurance his employer had.

In 2004, Steven Stonehocker (the "Agent") began selling FB's insurance products as an independent contractor. He was assigned the Merriams as clients and was to service that account. At that time, FB provided home owner's insurance to the Merriams for their primary residence.

In 2005, Christine contacted the Agent seeking similar insurance for a second residence being purchased for Tim's mother. The Agent met with the

Merriams at their home regarding their request for insurance on their personal autos, and they discussed the matter. The Merriams also asked about (1) insurance on their horses, and the Agent promised to look into it, as to price, (2) the price of insurance on Tim's guns, (3) insurance on a new garage and chicken coops in the existing homeowner's policy, and (4) life insurance on Tim's mother.

At that meeting, the Agent learned that Tim was an independent, self-employed over-the-road truck driver. The Agent inquired about the need/desire for life insurance as to him. Christine indicated that there was sufficient life insurance on Tim. There was no discussion, however, regarding worker's comp. insurance.

A few weeks later, Tim was badly injured. He was at his home, but he was also *at work*. He was repairing a driveway where he parked his truck. The dump truck he was using crushed his right arm. He had no worker's compensation insurance.

The Merriams sued the Agent and FB. They alleged that the Agent was negligent since he failed to advise them regarding the need for worker's compensation insurance. The clients claimed that the Agent was in a position of superior knowledge and had an obligation to bring the matter up. Further, they alleged that FB was vicariously liable for Agent's negligence.

The district court granted the defendants' motion for summary judgment, finding that the agent, as a matter of law, exercised reasonable care in procuring the explicitly requested insurance and owed the Merriams no expanded duty to advise about the need for workers compensation insurance.

The Iowa Supreme Court affirmed. In so doing, the court reiterated the principle that insurance agent's duty is limited to procuring explicitly requested coverage unless the circumstances establish an expanded duty to advise about the customer's insurance needs. The court acknowledged that until recently Iowa law narrowly limited the circumstances under which an expanded agency relationship could arise to those situations when "the [insurance] agent holds himself out as an insurance specialist, consultant or counselor and is receiving compensation for consultation and advice apart from premiums paid by the insured [principal]." *Langwith v. Am. Nat'l Gen. Ins. Co.*, 793 N.W.2d 215, 219 (Iowa 2010) (quoting *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343

N.W.2d 457, 464 (Iowa 1984). However, in *Langwith* and again in the present case, the court recognized the need for “a more flexible method” of determining when imposition of an expanded duty is appropriate, and held that the claimant/customer/client has the burden of proving the existence of an expanded duty based on consideration of a variety of facts circumstances.

Among the circumstances the court appeared to consider relevant to the existence of an expanded duty beyond the general duty to obtain the coverage requested were: (1) the duration of the relationship between agent and client; (2) the nature of that agent-client relationship; (3) the number of policies which the customer had with the relevant insurer; (4) the claimant’s then existing other insurance needs; (5) the insurance policy focus of any relevant meeting, e.g., what questions the client-claimant asked; (6) the role of pricing in a relevant meeting; (7) perhaps the nature and level of the agent’s knowledge of work-related facts about the client; (8) maybe the length and depth of agent’s unsolicited recommendations; (9) whether the agent was genuinely more knowledgeable than the customer and the nature of the superior knowledge, including the level of the client’s sophistication and history, and (10) whether the client explicitly or implicitly made inquires about a topic including or close to the insurance advice at issue.

In finding that the Merriams had failed to raise a triable issue of fact regarding the existence of a duty, the court held the agent’s superior knowledge, alone, is not sufficient to create an obligation for the agent to advise the claimant as to what it should purchase. If that were the case, said the court, then every well informed and/or well trained agent would have a duty to review and advise every client as to all of its possible insurance needs. With respect to other elements on the list, the plaintiffs failed to produce facts to support their position. For this reason, summary judgment for the defendants was affirmed.

### Comment

The Iowa Supreme Court has articulated and developed a rule of law, which—if adopted—would substantially modify the law governing insurance agents and litigation that their customers bring against them. However, the court’s refusal to find

triable issues of fact suggests that the imposition of new duties on agents is likely to be evolutionary rather than revolutionary. // Quinn

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## Bad Faith/Damages

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### Louisiana Supreme Court Allows Recovery of Mental Anguish Damages under Louisiana’s Bad Faith Statute

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*Evidence of Flood Insurance Payments Is Admissible and Relevant in Dispute over Coverage for Wind Damage*

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*Wegener v. Lafayette Insurance Company*, \_\_\_ So.3d \_\_\_, 2011 WL 880339 (La. Mar. 15, 2011)

#### Case at a Glance

Insureds may recover mental distress damages under Louisiana’s bad faith statute, La. R.S. 22:1220 (now La. R.S. 22:1873), without proving the insurer had an “intent to aggrieve” the insured. The “intent to aggrieve” requirement in La. C.C. 1998, governing damages recoverable for breach of contract, does not limit the damages recoverable for bad faith claims handling under Louisiana’s bad faith statute.

#### Summary of Decision

Plaintiffs’ two-story home in New Orleans sustained severe damage during Hurricane Katrina. Plaintiff’s flood insurer, State Farm Insurance Company, paid plaintiffs its policy’s coverage limits of \$198,000 for the dwelling, \$27,000 for contents, and \$8,330 for Increased Cost of Compliance (ICC), for total payments of \$234,230. Plaintiff also sought coverage from their homeowners insurer, Lafayette Insurance Company. Lafayette’s policy, which excluded flood damage, provided coverage limits of \$229,000 for the dwelling, \$22,900 for other structures, \$114,500 for personal property, and \$45,800 additional living expenses.

Lafayette’s adjuster inspected the property and found approximately \$27,000 of wind damage to the