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The Insurance Placement Liability Act After *Skaperdas v. Country Casualty Insurance Company*

Through the Insurance Placement Liability Act (IPLA), the Illinois legislature defined the duty of ordinary care for Illinois insurance producers in procuring insurance. Under Section 2-2201(a) of the IPLA, "[a]n insurance producer, registered firm, and limited insurance representative shall exercise ordinary care and skill in renewing, procuring, binding, or placing the coverage requested by the insured or proposed insured." 735 ILCS 5/2-2201(a). In *Skaperdas v. Country Casualty Insurance Company*, 2015 IL 117021, the Illinois Supreme Court provided significant guidance concerning the scope and application of the IPLA.

While the primary issue in *Skaperdas* concerned including captive insurance agents within the IPLA's framework, the Illinois Supreme Court also made clear that the duty imposed on insurance producers by the IPLA is limited in nature. According to the supreme court, the IPLA does not require a producer "to obtain the best possible coverage for a customer, but only requires the [insurance producer] to exercise ordinary care and skill in obtaining the coverage requested by the insured or proposed insured." *Skaperdas*, 2015 IL 117021, ¶ 30. Likewise, this duty is triggered only after the insured makes a "specific request" for insurance coverage. *Id*. ¶ 42. A "duty may not be imposed . . . based on a vague request to make sure the insured is covered." *Id*. ¶ 43.

Since *Skaperdas*, Illinois state and federal courts have had a few opportunities to apply the direction provided by the Illinois Supreme Court when addressing claims against insurance producers. For example, in *Office Furnishings, Ltd. v. A.F. Crissie & Co.*, 2015 IL App (1st) 141724, the Illinois Appellate Court First District rejected an attempt to apply an insurance producer's duties expansively under the IPLA. The facts of this case were fairly straight-forward.

After an insured's representatives contacted an insurance broker seeking replacement coverage for the insured's building, the broker arranged a meeting with an American Family agent. *Office Furnishings, Ltd.*, 2015 IL App (1st), ¶ 10. During this meeting, the American Family agent asked the insured's representatives several questions to complete an American Family insurance application. *Id.* ¶¶ 11-12. Although the broker was present, he was not in charge of the meeting (the American Family agent was) and did not ask any questions. *Id*. ¶ 13. The American Family application ultimately contained inaccurate information about the roof of the insured's premises. As a result, although American Family issued a policy, American Family denied the insured's claim related to its building's roof due to the application's misrepresentations. *Id*. ¶ 15.

In the ensuing litigation against the broker, the insured alleged that the broker was negligent because (1) he failed to ensure that the insured's representatives understood the questions on the American Family application, (2) he failed to explain that incorrect answers on the application could lead to the denial of a subsequent claim, and (3) he failed to confirm that the answers on the application were correct. *Id.* ¶ 17. On appeal, the First District found that this theory of liability improperly imposed duties onto the broker that were unsupported by the language of the IPLA and the Illinois Supreme Court's interpretation of the IPLA in *Skaperdas*. The court reasoned:

> [The insured] is essentially arguing that by engaging in the aforementioned conduct, [the broker] created a duty, beyond the exercise of ordinary care outlined in *Skaperdas*, to verify the accuracy of the information on the insurance application and to review the application with defendants. [sic] Our supreme court made clear in *Skaperdas* that section 2-2201(a) . . . imposes on an insurance producer only a duty to exercise ordinary care in renewing, procuring, binding, or placing the coverage specifically requested by the insured. . . . The evidence shows that [the insured] did not make a specific request for coverage, only that it was assumed [the broker] would find replacement insurance for plaintiff. [The broker], as the insurance producer, found an insurer, American Family, to provide a replacement policy as requested. Through [the American Family agent], plaintiff was issued a replacement policy. . . . According to [*Skaperdas*], defendants fulfilled their duty owed to plaintiff. To require [the broker] to review the American Family application with [the insured's representatives] for accuracy, and advise them on the necessity of providing accurate information, would extend the section 2-2201 duty "beyond that expressly defined by the legislature."

Id. ¶¶ 25-26. (citation omitted).

Similarly, the Court of Appeals for the Seventh Circuit rejected an insured's attempt to impose broad duties onto an insurance producer in *M.G. Skinner & Associates Insurance Agency v. Norman-Spencer Agency, Inc.*, 845 F.3d 313 (7th Cir. 2017). In this case, an insured sued an insurance agency for negligence after an insurance policy procured for the insured turned out to be fraudulent. The insurance agency, however, was not actually within the chain of brokers and sub-brokers that procured the fraudulent policy. Rather, the insurance agency had a more collateral role in the insurance transactions surrounding the procurement of the fraudulent policy. *M.G. Skinner & Assocs. Ins. Agency*, 845 F.3d 313, 315-18.

The United States District Court for the Northern District of Illinois entered summary judgment in favor of the insurance agency, and the Seventh Circuit affirmed. The Seventh Circuit determined that "there [was] no evidence that any broker in the procurement chain ever requested that [the insurance agency] serve as a sub-broker to procure insurance for" the insured. *Id*. at 319. As a consequence, the insurance agency "had no duty to" the insured under the IPLA. *Id*.

Additionally, the Seventh Circuit rejected the insured's attempt to utilize "more general 'common law negligence principles'" to impose a duty onto the insurance agency outside of the IPLA. *Id*. The Seventh Circuit stated that, "[a]fter the enactment of [the IPLA], Illinois courts considering negligence claims against insurance brokers have been reluctant to expand the duties of brokers and agents beyond those articulated in the statute." *Id*. at 320. And, "[g]enerally, a duty to the insured arises only after specific coverage is requested, and courts have not considered negligence claims grounded in more general negligence principles outside the scope of [the IPLA's] language." *Id*. (citing *Skaperdas*, 2015 IL 117021, ¶ 37).

As these cases illustrate, in *Skaperdas,* the Illinois Supreme Court explained that the IPLA defines an insurance producer's duty of ordinary care in procuring insurance in Illinois and that the scope of this duty is limited. Significantly, the duty is only triggered when an insured makes a "specific request" to the producer for insurance coverage. The IPLA does not impose a duty when only a vague request is made to ensure that the insured is "covered."

Moreover, when a plaintiff cannot satisfy the "specific request" requirement of the IPLA in a case against a producer, Illinois courts are resistant to use common law negligence principles to create duties for insurance producers outside of

the purview of the IPLA. As such, with the clarity brought with *Skaperdas*, Illinois insurance producers have some definable guidance as to the nature and extent of their potential professional liability and protection from unforeseeable and nebulous theories of negligence in cases brought against them.

About the Author

Patrick D. Cloud is an attorney in *Heyl, Royster, Voelker & Allen, P.C.*'s Edwardsville office. Mr. Cloud concentrates his practice on insurance coverage litigation, toxic tort matters, complex civil litigation, and products liability defense. As part of his practice, he takes a lead role in significant pretrial discovery, motions and briefs, such as those involving federal preemption, *forum non conveniens,* the Illinois *Frye* doctrine, consumer fraud, and insurance coverage litigation pending throughout the Midwest.

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