

TEXAS INSURANCE LAW NEWSBRIEF

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COURT OF APPEALS DECLINES TO EXPAND COMMON-LAW DUTIES OF INSURANCE AGENTS

Last week, the Court of Appeals rejected the plaintiffs' argument that an insurance agent owed them three additional duties in addition to the two well-established common law duties of insurance agents. In *Garcia v Hartwig Moss Insurance Agency, LTD*, No. 01-20-00420-CV, 2022 WL 1250564 (Tex. App.—Houston [1st Dist.] April 28, 2022, mem. op.), Roland and Karen Garcia sought a homeowner's insurance policy through Hartwig Moss Insurance Agency ("Hartwig"). The Garcias understood from their conversations with Hartwig that flood insurance would be procured. However, Hartwig understood that the Garcias already had an underlying flood insurance policy and only procured flood extension coverage. The Garcias did not realize that the flood extension coverage was separate from flood coverage and would provide no benefit without an underlying flood policy. In August 2017, Hurricane Harvey flooded the Garcias' home. They subsequently submitted a claim, which was denied.

The Garcias sued Hartwig under a negligence theory. In addition to the two well-established common law duties of an insurance agent (i.e., (1) to use reasonable diligence in attempting to place requested insurance and (2) to inform the client promptly if unable to do so), the Garcias contended that Hartwig owed them three additional common law duties: (1) to keep them fully informed so that they could remain safely insured at all times, (2) to know that its representations to them were, in fact, true, and (3) to carry out their instructions correctly such that total reliance on Hartwig would be justified.

The Court of Appeals disagreed. To start, the court concluded that *Trinity Universal Ins. Co. v. Burnette*, 560 S.W.2d 440 (Tex. Civ. App.—Beaumont 1977, no writ), for which the Garcias relied on for the proposition that an insurance agent has a duty to keep the insured fully informed so that they could remain safely insured at all times, was inapplicable. To that end, in *Burnette*, the agent failed to renew the insured's policy or inform the insured that the policy was not renewed, whereas Hartwig allegedly failed to obtain requested coverage. "The duty discussed in *Burnette* has no application in the context of a policy that exists but allegedly fails to cover a certain type of loss, which is the circumstance that led to the Garcias' negligence claim."

Next, the court concluded that *Wyly v. Integrity Ins. Solutions*, 502 S.W.3d 901 (Tex. App.—Houston [14th Dist.] 2016, no pet.), for which the Garcias relied on for the proposition that Hartwig had a duty to know what it represented to them was true, was also inapplicable. The dispute in *Wyly* was whether the agent made an affirmative misrepresentation in violation of the Deceptive Trade Practices Act and the Insurance Code, whereas the Garcias asserted only a common-law negligence claim. "The discussion in *Wyly* from which the Garcias seek to derive a duty has no application outside the context of the statutory claims addressed in that case."

Lastly, the court concluded that *Insurance Network of Texas v. Kloesel*, 266 S.W.3d 466 (Tex. App.—Corpus Christi 2008, pet. denied), for which the Garcias relied on for the proposition that an insurance agent has a duty to carry out the insured's instructions correctly, does not support the Garcias' contention that an insured has a conclusive right to rely on the insured's instructions being properly carried out by the agent. "Instead, ... the question is one of degree and fact, analyzing the reasonableness of the insured's actions as part of an evaluation of contributory negligence by the insured."

In sum, the Court of Appeals conclude "that none of the three cases that the Garcias rely on support[ed] their contention that such a duty exists in the context of an insured receiving a policy but not the full extent of coverage requested."