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[Warehouse Foods, Inc. v. Corporate Risk Management Services, Inc.](#)

Court of Appeal of Florida, First District

August 24, 1988, Filed

No. 87-1134

Reporter

530 So. 2d 422 *; 1988 Fla. App. LEXIS 4004 **; 13 Fla. L. Weekly 1991

WAREHOUSE FOODS, INC., WAREHOUSE FOODS #102, INC., and WAREHOUSE FOODS #103, INC., Florida corporations, Appellants, v. CORPORATE RISK MANAGEMENT SERVICES, INC.; WILLIAM KEITH JONES; and INSURANCE COMPANY OF NORTH AMERICA, Appellees

Prior History: **[**1]** An Appeal from the Circuit Court for Leon County, William L. Gary, Judge.

Core Terms

coverage, insured, expertise, losses, negligent failure, summary judgment, material fact, present case, misrepresentation, precludes, advise

Case Summary

Procedural Posture

Appellant insureds sought review of a summary judgment granted by the Circuit Court for Leon County (Florida), which denied their claim to recover damages from appellees, insurer, the local agency, and the insurance agent, for uninsured losses caused by power loss during a hurricane.

Overview

Appellant insureds contended that there had been a breach of duty to provide adequate coverage or an actionable misrepresentation by appellees, the insurer, the local agency, and the insurance agent, concerning appellant's coverage for losses incurred during a hurricane-related power outage. Because the court found there were disputed issues of material fact, the court reversed the summary judgment. The court found there were issues of whether appellees fulfilled their duties in obtaining complete coverage as requested by appellants even though appellants had not indicated any

special insurance needs, whether appellee agent had used his expertise adequately in obtaining appellants' insurance coverage, and whether appellee agent had negligently failed to advise appellants regarding their coverage.

Outcome

The court reversed the summary judgment granted in favor of appellees, the insurer, the local agency, and the local agent, because there were issues of material fact concerning whether appellees had adequately proposed coverage for appellant insureds or negligently represented the coverage.

LexisNexis® Headnotes

Insurance Law > Liability & Performance Standards > Good Faith & Fair Dealing > Agents & Brokers

Insurance Law > Claim, Contract & Practice Issues > Fiduciary Responsibilities

[HN1](#) **Good Faith & Fair Dealing, Agents & Brokers**

An agent is required to use reasonable skill and diligence, and liability may result from a negligent failure to obtain coverage which is specifically requested or clearly warranted by the insured's expressed needs.

Insurance Law > Claim, Contract & Practice Issues > Estoppel & Waiver > Agent & Broker Representations

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Real Property Law > Common Interest
Communities > Condominiums > Condominium
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Insurance Law > Liability & Performance
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Insurance Law > Claim, Contract & Practice
Issues > Estoppel & Waiver > Misrepresentations

Insurance Law > Claim, Contract & Practice
Issues > Estoppel & Waiver > Policy Coverage
Issues

Insurance Law > Claim, Contract & Practice
Issues > Fiduciary Responsibilities

[HN2](#) **Estoppel & Waiver, Agent & Broker Representations**

When an insured reasonably relies upon an agent's claimed expertise and advice, liability may be based upon the agent's negligent failure to properly advise the insured as to coverage. A misrepresentation by the agent might warrant an estoppel precluding the insurer from denying coverage.

Counsel: Jose J. Elortegui, of Gardner, Shelfer & Duggar, Tallahassee, for Appellees Jones and CRMS.

Marilyn M. McFadden, of Field, Granger, Santry & Mitchell, Tallahassee, for Appellee INA.

Judges: Wentworth, J. Ervin and Wigginton, JJ., concur.


Opinion by: WENTWORTH


Opinion

[*423] Appellants seek review of a summary final judgment denying their claim to recover damages for uninsured losses. The lower court rejected appellants' contention that there had been a breach of duty to provide adequate coverage or an actionable misrepresentation by the insurer, the local agency, and the insurance agent. We find that disputed issues of material fact were presented in this regard and that

summary judgment therefore should not have been granted.

Appellants are corporations which were doing business as grocery stores and allegedly sustained losses when utility service was interrupted for several days after a hurricane. An insurance claim was submitted for the loss, but was denied due a policy provision limiting such coverage to those situations where there is damage to the insured's buildings or equipment. Appellants filed a complaint seeking recovery [*2] for their losses, asserting that they had relied upon the expertise of the insurer's agent. It was further asserted that this agent had advised that appellants would be "fully covered . . . and did not need any other coverage."

[HN1](#)  An agent is required to use reasonable skill and diligence, and liability may result from a negligent failure to obtain coverage which is specifically requested or clearly warranted by the insured's expressed needs. See *Sheridan v. Greenberg*, 391 So.2d 234 (Fla. 3d DCA 1981); *Caplan v. LaChance*, 219 So.2d 89 (Fla. 3d DCA 1969). The claimed loss in the present case was largely due to spoilage of inventory in cold storage, and appellants admitted that they did not directly advise the agent of any special insurance needs in this regard. But the record contains testimony that appellants did express a desire to be fully insured, questioning whether "everything" was covered and specifically inquiring about acts of God; that the agent repeatedly advised appellants that the insurance proposal contained all the coverage they needed; and that in accepting the proposal appellants relied upon the agent's expertise and assurances [*3] that the policy would provide full coverage.

[HN2](#)  When an insured reasonably relies upon an agent's claimed expertise and advice, liability may be based upon the agent's negligent failure to properly advise the insured as to coverage. See *Seascope of Hickory Point Condominium Association v. Associated Insurance Services*, 443 So.2d 488 (Fla. 2d DCA 1984). And a misrepresentation by the agent might warrant an estoppel precluding the insurer from denying coverage. See *Crown Life Insurance Co. v. McBride*, 517 So.2d 660 (Fla. 1987); *Peninsular Life Insurance Co. v. Wade*, 425 So.2d 1181 (Fla. 2d DCA 1983). In the present case appellants presented a factual predicate for their claim, and the existence of these issues of material fact precludes summary judgment. See *Aloff v. Neff-Harmon, Inc.*, 463 So.2d 291 (Fla. 1st DCA 1984).

The order appealed is reversed and the cause remanded.

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Ervin and Wigginton, JJ., concur.

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