



Iowa General Assembly

2012 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.

INSURANCE PRODUCERS' SCOPE OF DUTY—REVISITED

Filed by the Iowa Supreme Court

July 6, 2012

Pitts v. Farm Bureau Life Ins. Co. and Donald Schiffer

No. 11-0117, __N.W.2d__ (Iowa 2012)

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20120706/11-0117.pdf

On review from the Iowa Court of Appeals

Factual Background. Plaintiff Michele Pitts (Michele) married Thomas Pitts (Thomas). At the time of their marriage, Thomas was paying child support for a daughter from a previous relationship and maintained a life insurance policy for her through defendant Farm Bureau Life Insurance Company (Farm Bureau). Thomas told his insurance agent, Donald Schiffer (Schiffer) to pay the first \$35,000 of insurance proceeds to his daughter with the balance, if any, going to Michele. Michele alleged that after Thomas's child support obligation ended, he told Schiffer to change the beneficiary designation so that Michele would receive all of the insurance proceeds. Michele alleged that both Thomas and Schiffer told her that this change was made. After Thomas died, Michele and her parents met with Schiffer who allegedly told her again that she would receive the full amount of the proceeds. Later, Michele was informed by Schiffer that in fact, Thomas's daughter would receive the first \$35,000 of the insurance proceeds and that Michele would receive the remaining \$74,000.

Procedural Background.

District Court. Michele filed a petition in district court alleging negligence and negligent misrepresentation against Schiffer, and naming Farm Bureau under a theory of respondeat superior. Michele's petition alleged that Schiffer was negligent in failing to change the beneficiary designation of the life insurance policy at Thomas's request and in representing to Thomas and Michele that the designation had been changed. Michele alleged that as an intended third-party beneficiary of the insurance policy, Schiffer owed her a duty of care and was negligent in exercising that duty.

The district court granted the defendants' motion for summary judgment and dismissed the case on the basis that Thomas did not execute a written request to change the beneficiary designation as required by the insurance policy. The district court declined to address Michele's negligence claims.

Iowa Court of Appeals. On appeal, the Court of Appeals considered Michele's negligence claims and surveyed the legal landscape in Iowa concerning the scope of the duty of care owed by an insurance agent. The Court of Appeals found that in *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457 (Iowa 1984), the Iowa Supreme Court (Court) held that insurance agents owe a general duty to "use reasonable care, diligence, and judgment in procuring the insurance requested by an insured" and that a greater duty could be owed "when the 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."

In December 2010, in *Langwith v. Am. Nat'l Gen. Ins. Co.*, 793 N.W.2d 215 (Iowa 2010), the Court overruled *Sandbulte's* characterization of the scope of duty owed by an insurance agent to a client and instead held that the duty should be determined "based on a consideration of all the circumstances, the agreement of the parties with respect to the service to be rendered by the insurance agent, and whether that service was performed with the skill and knowledge normally possessed by insurance agents under like circumstances."

The Court of Appeals found that in April 2011, the holding of *Langwith* was expressly abrogated by the Iowa General Assembly with the enactment of Iowa Code §522B.11(7), to the extent that *Langwith* imposed higher or greater duties and

responsibilities on insurance agents than those set forth in *Sandbulte*.

The Court of Appeals noted that the district court issued its ruling three weeks before the issuance of *Langwith*, pursuant to the duty of care principles enunciated in *Sandbulte*. Based on the facts of this case, the Court of Appeals found that Schiffer owed Thomas only the general duty of care articulated in *Sandbulte*. The Court found no authority for declaring a new independent duty of care owed by an insurance agent to Michele as an intended beneficiary of the life insurance policy and also declined to hold that such an intended beneficiary has a claim for negligent misrepresentation. For those reasons, the Court of Appeals upheld the dismissal of Michele's case by the district court. *Pitts v. Farm Bureau Life Ins. Co. and Donald Schiffer*, 807 N.W. 2d 296 (Iowa App. 2011). Michele sought and was granted further review by the Court.

Iowa Supreme Court—Issues on Further Review.

1. Whether a life insurance agent owes a duty of care to the intended beneficiary of a life insurance policy.
2. Whether a life insurance agent can be liable for negligent misrepresentation when the agent provides information to the insured and the intended beneficiary regarding the beneficiary designation listed on the life insurance policy.

Analysis and Holding.

Negligence Claim. The Court observed that the scope of duties an insurance agent owes his client has recently been the subject of litigation and legislation when the 1984 *Sandbulte* case was overruled in 2010 by the Court in the *Langwith* case, and when the *Langwith* case was then abrogated by the legislature in 2011 to the extent that *it* overruled *Sandbulte*, with the enactment of Iowa Code §522B.11(7). The Court found that those cases and the statute address what duties an insurance agent owes to the insured, not who the agent can be liable to when those duties are breached, which is the issue in this case.

The Court concluded that insurance agents and brokers owe a duty of care to third parties in limited circumstances. The Court held that an insurance agent owes a duty to the intended beneficiary of a life insurance policy in limited circumstances. A plaintiff asserting breach of that duty of care by an insurance agent must show that the plaintiff was the direct, intended, and specifically identifiable beneficiary of the policy, as well as the other elements of negligence. In looking at Michele's claim in this case, the Court concluded she had presented facts, if true, which would support her claim that Schiffer's negligence was the reason she was not the primary beneficiary of the entire policy. Thus, summary judgment on this claim was inappropriate.

Negligent Misrepresentation Claim. For this tort, the Court noted that past Iowa cases have held that only those who are in the business of supplying information to others can be liable for negligent misrepresentation. The Court concluded that Schiffer is among the class of defendants against whom an action for negligent misrepresentation may be brought. When Schiffer allegedly made the misrepresentations at issue in this case, he was acting as an insurance agent providing information regarding the identity of a beneficiary of a life insurance policy to both the insured and the intended beneficiary of the policy. This information was provided in the course of his business, profession, or employment. Schiffer's alleged misrepresentations to Michele were made in the course of his business and her reliance on those statements was foreseeable. Based on Michele's claim, the facts alleged, if true, would support her claim that Schiffer negligently misrepresented who was the primary beneficiary on the life insurance policy. Summary judgment on this claim was also inappropriate.

Respondeat Superior Claim. Michele's respondeat superior claim against the insurer, Farm Bureau, cannot be resolved as long as Schiffer's liability is unclear, so summary judgment on that claim was inappropriate as well.

Disposition. The Court reversed the decision of the district court, vacated the decision of the Court of Appeals, and remanded the case for further proceedings in district court.

Dissent. Three justices dissented on the basis, among other things, that the majority opinion created an unwarranted expansion of existing Iowa law by removing the current limitation that the intent to provide for the beneficiary must have been "expressed in" the written instrument. The dissent stated that the majority opinion recognizes a duty on the part of insurance agents that has not, until now, been recognized in Iowa. In addition, in 2011, the legislature "essentially froze the duties and responsibilities of insurance agents to those set forth in *Sandbulte*, which did not mention any duties to nonclients."

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