Iowa General Assembly

2012 Legal Updates

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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

Filed by the Iowa Court of Appeals
February 29, 2012

Wuebker and Wuebker v. Heenan Agency, Inc., and Ray Heenan

No. 10-2036

Unpublished Decision — http://www.iowacourtsonline.org/court_of_appeals/Recent_Opinions/20120229/1-960.pdf

Background Facts and Procedure. The plaintiffs, Jerome and Debra Wuebker (Wuebkers) own and operate an automobile servicing garage, body shop, and automobile detailing businesses in Perry, Iowa. For many years the Wuebkers were advised by and purchased property casualty insurance for their businesses from the defendants, Heenan Agency, Inc. and Ray Heenan (Heenans). In May 2008, a fire caused extensive damage to the Wuebkers' businesses. In the aftermath the Wuebkers discovered that their insurance policy was inadequate to cover their losses.

In May 2009, the Wuebkers filed a negligence claim against Heenans alleging they breached their duty of care by failing to advise the Wuebkers of the amount of coverage needed and to obtain the amount of coverage needed.

In August 2010, the Heenans moved for summary judgment. In December 2010, the district court granted summary judgment in favor of the Heenans, citing *Sandbulte v. Farm Bureau Mut. Ins.*, 343 N.W.2d 457 (Iowa 1984). In that case, the Iowa Supreme Court (Court) held that an expanded agency agreement sufficient to require a greater duty of care from an insurance producer exists only when the insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for such consultation and advice apart from premiums paid by the insured. The district court found that the facts did not support an expanded agency agreement between the Wuebkers and the Heenans. The Wuebkers appealed and the case was transferred to the Court of Appeals.

While the appeal was pending, two events relevant to the case occurred. First, in December 2010, the Court issued a decision in *Langwith v. American National General Insurance Company*, 793 N.W.2d 215 (Iowa 2010) that overruled *Sandbulte* to the extent that *Sandbulte* limited the expanded duty of care an insurance producer owes to clients to specific situations. Instead, the Court held that the fact finder could determine, based on the circumstances of each case, what the agreement of the parties was with respect to the service to be performed and whether the service was performed with the skill and knowledge normally possessed by insurance producers under like circumstances.

Second, in April 2011, during the next legislative session after the *Langwith* decision was issued, the Iowa General Assembly enacted Iowa Code §522B.11(7) adopting the holding in *Sandbulte* and explicitly abrogating the *Langwith* decision. This legislation restored the limited scope of an insurance producer's duty to clients except in specific situations.

Issues on Appeal.

1. Whether the expanded scope of duty for insurance producers adopted by the Court in the 2010 *Langwith* decision applies retroactively to this case.
2. Whether the limited scope of duty for insurance producers enacted in 2011 in Iowa Code §522B.11(7) has only prospective applicability and does not apply to this case.
3. Whether Iowa Code §522B.11(7) violates equal protection and the separation of powers under the Iowa Constitution.

Analysis and Holding. The Court of Appeals found that Iowa Code §522B.11(7)(a) provides that the *Sandbulte* case defines the duties and responsibilities of insurance producers. The Court of Appeals noted that while the statute does not expressly address the subject of retroactivity, subparagraph (b) necessarily implies that subsection (7) is intended to eliminate the application of the principles set forth in the *Langwith* case. The Court of Appeals said that the newly enacted

statute, adopted only months after the *Langwith* decision, is “an obvious effort to correct what the legislature determined to be a court decision that did not express what the legislature wanted the public policy to be with respect to duties and responsibilities of an insurance producer.” The Court of Appeals further noted that it is just and reasonable to apply the principles of the *Sandbulte* case since that was the law in effect when the alleged breach of duty occurred, when the summary judgment was granted, and when the Wuebkers filed their appeal, and this interpretation gives effect to the entire statute and addresses the public interest as defined by the legislature.

Constitutional Claims. The Wuebkers asserted that Iowa Code §522B.11(7) violates equal protection because it provides a different standard of care for insurance producers than for other professions. The Court of Appeals held that the standard enunciated in *Sandbulte* is “reasonable care” which is the normal common law requirement for a negligence claim. The purpose of providing protection to an insurance producer from an expanded agency relationship has a rational basis and is not constitutionally deficient.

The Wuebkers also asserted that the legislature violated the separation of powers principle by adopting Iowa Code §522B.11(7). The Court of Appeals held that the legislature has the power to enact statutes that establish standards and scopes of duty for insurance producers. The Court of Appeals also held that while the legislature may not use retroactive legislation to control cases already finally adjudicated by the courts, the legislature does have the power to enact a law that is clearly retroactive and that law must be applied in reviewing judgments still on appeal that were rendered before the law was enacted. Since this case had not reached a final judgment within the courts, retroactive application of the new statute to this case does not constitute a separation of powers violation.

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