

ANDERSON KILL NEW JERSEY ALERT



New Jersey Courts Provide Clarity on Insurance Broker Liability

By Robert D. Chesler, Steven J. Pudell and Janine M. Stanisz

New Jersey law broadly protects policyholders against errors by their insurance agents and brokers and also provides considerable scope for findings of broker liability. In *Aden v. Fortsh* the state's Supreme Court held that a policyholder need not even read its insurance policy, but rather can rely upon its broker. 169 N.J. 64 (1999). Importantly, the court also held that an insurance broker is in a fiduciary relationship with a policyholder.

After *Aden*, however, New Jersey courts were quiet on issues of broker liability until recently, when two Appellate Division decisions revisited the issue of broker liability and provided additional guidance to brokers on the obligations they owe policyholders. See *Huggins v. Liberty Mut. Ins. Co.*, No. A-1187, 2014 N.J. Super. Unpub. LEXIS 1102 (N.J. App. Div. May 14, 2014); *Duffy v. Certain Underwriters at Lloyds of London*, No. A-5797, 2014 N.J. Super. Unpub. LEXIS 1789 (N. J. App. Div. July 21, 2014).

In *Huggins*, the homeowner requested from the sales agent, the most inclusive coverage available. The homeowner testified that she wanted "all beneficial coverage options" and advised the agent that the house had a sump pump. The policy that Liberty Mutual ultimately sold did not provide sump pump coverage, although such coverage was available by endorsement. The following year, the policyholder's sump pump failed, resulting in a \$35,000 loss.

The homeowner sued Liberty Mutual not for coverage, but for failure to advise them of the availability of sump pump coverage. Liberty Mutual's sales agent testified that the homeowner had been offered such an endorsement, but had decided not to purchase sump pump coverage. While the agent claimed he had taken notes regarding this discussion, on his initial interview questionnaire he testified that he had lost those notes. Liberty Mutual prevailed on Summary Judgment, but the Appellate Division reversed. The Appellate Division found

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that “[t]here [wa]s no dispute that [the homeowner] did not specifically ask for the sump pump option, but there [wa]s a factual dispute as to whether it was offered” to the homeowner. *Huggins*, 2014 N.J. Super. Unpub. LEXIS 1102 at *4.

Huggins heightened the burden on agents and brokers in New Jersey when offering and issuing insurance policies. The *Huggins* decision is rooted in the homeowner’s request for “the most inclusive” coverage available. Similarly, it is not unusual for an agent or broker to offer, for example, to examine a policyholder’s operations and risks and advise the policyholder regarding what insurance coverage the policyholder should purchase. Such commitments by the agent or broker in effect make them a risk manager, who must be knowledgeable of all a policyholder’s risks and the insurance remedies that are needed and available.

If *Huggins* enlarged an agent’s and broker’s duty in some circumstances, *Duffy* narrowed it in other circumstances. In *Duffy*, the policyholder changed brokers and insisted that the new broker issue a policy that would not increase the policyholder’s premium. The policyholder gave information during the insurance application process, but much of the information was inaccurate. That issued policy offered coverage in the amount of \$150,000, yet when the policyholder’s house burnt down, the damage was valued at \$460,000. The policyholder sued the broker for professional negligence as a result of procuring inadequate insurance coverage, but both the trial court and the Appellate Division

negated the claim. The Appellate Division reasoned that the amount of insurance coverage was “clearly and prominently stated and easily understood. Were plaintiff dissatisfied with the extent of coverage, an opportunity to raise such concerns presented itself with each annual renewal.” *Duffy*, 2014 N.J. Super. Unpub. LEXIS 1789, at * 18-19. The trial court granted the broker’s summary judgment motion and the Appellate Division affirmed. The Appellate Division explained, “the facts reflect [the policyholder’s] desire to obtain a level of homeowner’s coverage that was consistent with her expired . . . policy; she did not desire modifications that would raise her premium[.]” *Id.* at *21.

Both *Huggins* and *Duffy* offer lessons for policyholders, brokers and agents. Policyholders should seek the broadest coverage possible and look to hold their brokers liable should it turn out that the broker or agent failed to provide the coverage that was promised. Policyholders should confirm in writing that they are seeking the broadest or most comprehensive coverage. For their part, insurance brokers and agents need to listen to policyholders and offer the requested coverage. In order to better protect their interests, brokers and agents also need to keep detailed records to demonstrate that they offered coverage options in accordance with their customers’ needs. Company checklists and proper filing of records are essential tools in this regard.

Huggins specifically underscores the best broker and agent risk management device – keep records. Write down what coverage was offered, and what coverage the policyholder refused.▲

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