

Case Summary

Walter Angermeier and his company, Wolflin LLC, appeal the trial court's grant of summary judgment in favor of Schultheis Insurance Agency, Inc., and agent William Thompson. Specifically, they argue that a genuine issue of material fact exists as to whether Thompson and Schultheis Insurance Agency breached a general duty of care and whether special circumstances exist to support liability for failure to properly advise Angermeier and Wolflin about purchasing replacement-cost coverage for the improvements to their business. Finding no genuine issue of material fact as to whether the agency and agent breached a general duty of care and that no special circumstances exist to support a duty to advise, we affirm the trial court's grant of summary judgment in favor of Schultheis Insurance Agency and Thompson.

Facts and Procedural History

In 2003, Angermeier and his wife formed a limited liability company called Wolflin LLC for the purpose of purchasing Mt. Vernon Home Center, a lumber yard and home improvement center consisting of numerous buildings in Mt. Vernon, Indiana. Only one of those buildings is relevant in this appeal.

In 2004, Angermeier met with Thompson, an agent with Schultheis Insurance Agency, to discuss commercial insurance for the property. This was the first time that Angermeier used this agency and agent. According to Angermeier, he told Thompson at this initial meeting that he wanted insurance "to take care of everything" and that he would be doing some renovations. Appellants' App. p. 154. Angermeier said that he and Thompson did not discuss either policy limits or different types of coverage. *Id.* at 155.

Even though Angermeier said that he did not tell Thompson that he wanted replacement cost coverage, he “assumed” Thompson would secure replacement cost coverage. *Id.* According to Thompson, however, the parties in fact discussed both property values and actual cash value versus replacement cost, and Angermeier indicated that he wanted actual cash value. *Id.* at 148-49.

Indiana Farmers Mutual Insurance Group issued the initial policy on August 20, 2004, and this policy provided coverage limits of \$500,000 actual cash value for the building at issue. *Id.* at 157-58, 251-57, 275. Before this initial policy was issued, Angermeier signed a Statement/Schedule of Values on which limits of \$500,000 and type of coverage of Actual Cash Value (as opposed to Replacement Cost) are specifically designated for the building at issue. *Id.* at 261. Thompson either hand-delivered or mailed the initial policy to Angermeier within thirty days of its issuance. *Id.* at 275. Angermeier never read the initial policy. *Id.* at 159-60. Angermeier agrees that Thompson never told him that he had replacement cost coverage. *Id.* at 162.

Effective August 20, 2005, the policy was renewed and again provided policy limits of \$500,000 actual cash value for the subject building. Thompson either hand-delivered or mailed the 2005 policy to Angermeier within thirty days of its renewal. *Id.* at 275. Angermeier did not read this policy either. *Id.* at 313.

In November 2005, at the request of Indiana Farmers underwriter Debbie Smith, who worked with Thompson in this case, Midwest Technical Inspections conducted a survey and appraisal of the improvements to the building at issue. Midwest’s November 29, 2005, report showed a discrepancy between the actual cash value of the building with

the improvements and the replacement cost of the building with the improvements. *Id.* at 293 (actual cash value of \$820,475 and replacement cost of \$1,189,095). Thompson never saw this report and did not know if Schultheis Insurance Agency received it either. *Id.* at 319. According to Brett Schultheis, the president of Schultheis Insurance Agency, he never saw this report or any similar type of report in the past for any property insured by Indiana Farmers. *Id.* at 331-32.

The improvements were completed in early 2006. Thompson was aware of the improvements as they were being made because of his visits to the store. After the improvements were completed, Angermeier did not contact Thompson to increase the coverage on the building because he was too busy with the store. *Id.* at 159. The policy was reissued on August 20, 2006, with the same limits and type of coverage. Thompson either hand-delivered or mailed the 2006 policy to Angermeier within thirty days of its renewal. *Id.* at 275. Angermeier also did not read this policy. *Id.* at 313.

In addition, Thompson was never given authority to make decisions on behalf of Angermeier or Wolflin at any point during their relationship, and Thompson never offered advice concerning specialized insurance coverage. *Id.* at 275. Also, Thompson was not paid any amount above the standard commission paid by Indiana Farmers for the procurement of the insurance and the subsequent renewals. *Id.*

On September 4, 2006, the building at issue was destroyed by fire. According to Angermeier, this is when he first learned that the policy was “designated as actual cash value and not replacement value.” *Id.* at 284. Following the fire, the building was determined to have a market value of \$490,000. *Id.* at 278.

In June 2008, Angermeier and Wolflin (collectively, “Angermeier”) filed a complaint against Schultheis Insurance Agency and Thompson alleging negligence because they failed to procure adequate insurance to cover the value of the improvements. *Id.* at 8. In the complaint, Angermeier alleges negligence only for the August 2006 renewal policy. *Id.* In February 2010, Schultheis Insurance Agency and Thompson filed a motion for summary judgment. Following a hearing, the trial court entered summary judgment in favor of Schultheis Insurance Agency and Thompson in November 2010. The trial court’s order provides, in pertinent part:

Defendant Agent owed the insured a general duty of care to exercise reasonable care, skill and good faith diligence in obtaining insurance.

Indiana law does not require an agent to explain the difference between replacement and actual cash value.

Agent obtained an actual cash value limit of \$500,000.00.

In a separate action, the value of the insured property was found to be \$490,000.

Plaintiff never asked Agent to secure a policy for replacement cost.

No special relationship between plaintiff and agent was established.

The Court hereby grants Defendants['] Motion for Summary Judgment.

Id. at 5. Angermeier filed a motion to correct errors, which the trial court denied.

Angermeier now appeals.

Discussion and Decision

Angermeier contends that the trial court erred in granting summary judgment in favor of Schultheis Insurance Agency and Thompson.¹

When reviewing the entry or denial of summary judgment, our standard of review is the same as that of the trial court: summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Ind. Trial Rule 56(C); *Dreaded, Inc. v. St. Paul Guardian Ins. Co.*, 904 N.E.2d 1267, 1269 (Ind. 2009). All facts established by the designated evidence, and all reasonable inferences from them, are to be construed in favor of the nonmoving party. *Naugle v. Beech Grove City Sch.*, 864 N.E.2d 1058, 1062 (Ind. 2007).

Insurance agents potentially have a general duty of care and a duty to advise their clients. *Filip v. Block*, 879 N.E.2d 1076, 1085 (Ind. 2008), *reh'g denied*. Which duty governs in a particular case is a matter of law. *Id.* The general duty of care includes a duty to exercise reasonable care, skill, and good-faith diligence in obtaining insurance. *Id.* The law is settled that an insured must demonstrate some type of special relationship for a duty to advise to exist. *Id.* The insured must establish the existence of an intimate, long-term relationship with the agent or some other special circumstance. *Myers v. Yoder*, 921 N.E.2d 880, 885 (Ind. Ct. App. 2010). In other words, something more than the standard insurer-insured relationship is required to create a special relationship obligating the agent to advise the insured about coverage. *Id.* In the absence of a special relationship, the agent does not have a duty to tell the potential insured about the adequacy of the coverage or any alternative coverage that is available. *Filip*, 879 N.E.2d

¹ We note that Schultheis Insurance Agency and Thompson make a statute of limitations argument on appeal. But because the trial court based its decision on the merits, we likewise base our decision on the merits.

at 1085. Factors demonstrating the existence of a special relationship between the agent and the insured include whether the agent: (1) exercised broad discretion in servicing the insured's needs; (2) counseled the insured concerning specialized insurance coverage; (3) held himself out as a highly-skilled insurance expert; or (4) received compensation for the expert advice provided above the customary premium paid. *Myers*, 921 N.E.2d at 885.

Angermeier argues that there are special circumstances in this case both because Thompson knew about the improvements to the property before the policy was renewed in August 2006 and because of Midwest's report that showed a substantial disparity between the replacement value and the actual cash value. Appellants' Br. p. 8. Accordingly, Angermeier argues that Schultheis Insurance Agency and Thompson should have advised him to purchase replacement cost coverage after the improvements were completed.

We, however, find no special circumstances in this case. In 2004, Angermeier asked Thompson to procure insurance for him. This was the first time these parties had business dealings with each other. Angermeier did not ask for replacement-cost coverage. *See* Appellants' App. p. 155 ("Q: So did you ever specifically discuss replacement cost coverage with Bill Thompson prior to those policies going into effect? A: Replacement? No. I assumed that's what he gave me"). In August 2004, Thompson obtained an insurance policy for Angermeier from Indiana Farmers for \$500,000 actual cash value, and Angermeier received a copy of this policy. Thompson did not represent to Angermeier that the policy was for replacement-cost coverage.

Moreover, if Angermeier had simply read the policy, he would have realized that it had policy limits of \$500,000 actual cash value for the building in question. The policy was renewed twice, in 2005 and 2006, with the same provisions, and Angermeier never spoke with Thompson about changing the policy. Notably, Thompson received the customary premiums for these policies and was not given authority to make decisions on behalf of Angermeier.

Although Angermeier claims that the Midwest report is a special circumstance, the record is undisputed that neither Schultheis Insurance Agency nor Thompson knew or had reason to know about the report. And as for Angermeier's argument that Thompson knew about the improvements because of his visits to the store, Angermeier never once asked Thompson about increasing or changing the insurance coverage in light of the improvements. Accordingly, we find that no special circumstances exist which would have given rise to a duty to advise in this case. And because there is no duty to tell Angermeier about the adequacy of the coverage or any alternative coverage that is available in the absence of special circumstances, we also find that Thompson did not breach the general duty.

Nevertheless, Angermeier argues that this Court's holding in *United Farm Bureau Mutual Insurance Co. v. Cook*, 463 N.E.2d 522 (Ind. Ct. App. 1984), is instructive. However, *Cook* is readily distinguishable from this case, as the insured and agent had a ten-plus-year relationship and the agent's "role went beyond that of a mere agent" and involved "counsel[ing] [the insured] on the appropriate coverages for his [property]." *Id.* at 528. These facts alone distinguish *Cook* from the present case.

We therefore affirm the trial court's grant of summary judgment in favor of Schultheis Insurance Agency and Thompson.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.