

Insurance Broker Owes No Duty To Render Unsolicited Advice Regarding The Adequacy Of Policy Limits Of Liability

Maryland's intermediate appellate court made it more difficult for insureds to sue their agents or brokers, by clarifying the duty an insurance agent or broker owes its client to give unsolicited advice. In *Evelyn E. Sadler v. The Loomis Company*, 139 Md. App. 374, 776 A.2d 25, 2001 Md. App. LEXIS 118 (2001), the court held that absent a "special relationship" or a specific request, an insurance agent or broker does not owe an affirmative duty to advise the insured as to the adequacy of her policy limits.

Evelyn Sadler ("Sadler") was involved in an automobile accident that resulted in the other driver, Timothy Prophet ("Prophet"), having his leg amputated. Sadler had procured her automobile insurance through The Loomis Company ("Loomis") for 9 years. Her policy limits were \$100,000. Shortly after the accident it became obvious that these limits were insufficient. Sadler conveyed her home, which had a value of \$650,000, to her siblings for \$10.00. Prophet filed an automobile negligence suit against Sadler seeking \$10,000,000. When Prophet learned of the real estate transfer, he filed a second suit against Sadler and her siblings to set aside the alleged fraudulent conveyance of her home. Sadler eventually settled the two lawsuits for almost \$1,000,000. Her automobile insurance carrier contributed the maximum amount required by the policy – \$100,000. Sadler paid \$210,000 in cash and transferred her home to Prophet.

Sadler then filed suit against Loomis contending that Loomis, as an insurance broker, owed an affirmative duty to provide her with unsolicited advice concerning the adequacy of the level of liability coverage she had selected and periodic quotes regarding the cost of additional coverage. Loomis maintained that it had no continuing duty to advise its clients as to the adequacy of coverage, absent a "special relationship," and that it had no "special relationship" with Sadler. Sadler eventually conceded that there was no such relationship.

The court held that an insurance agent or broker is under no affirmative duty to render unsolicited advice concerning appropriate liability coverage, absent a “special relationship” or a specific request from the insured to provide such advice. Rather, the insured bears the burden of determining the amount of insurance she requires.

The court acknowledged several policy considerations underlying its holding. The insured is usually in the best position to assess the value of his or her assets and the risk of loss he or she is willing to bear. Also, the broker or agent must rely upon the insured’s representations as to the insured’s financial status, which the agent cannot readily verify. If the agent has the burden of advising the insured as to the adequacy of his policy limits, he may act defensively by selling the maximum available coverage, rather than the moderate amount most people find appropriate. Agents and their clients may determine whether a more aggressive or a laissez-faire style suits them. While some agents might be more proactive or aggressive in recommending limits well above what others recommend, this reflects a business judgment rather than the basis for imposing liability.

The court distinguished the case from those where the circumstances were sufficient to impose a duty, such as where the broker or agent failed to procure a coverage requested by the insured, where the broker or agent failed to explain to the insured that a new coverage differs from a requested or previously provided coverage, or where there was a “special relationship” between the parties. Further, the court distinguished an earlier decision, *Popham v. State Farm Mut. Ins.*, 333 Md. 136, 138 (1993), where the Court found that the insureds’ allegations that the agent’s failure to advise them that they could obtain UIM coverage in an amount equal to their coverage under their excess liability policy stated a cause of action in negligence. The *Sadler* court reasoned that the higher limits of UIM coverage was an optional component of the umbrella policy that the insureds had a right to purchase because they had purchased the underlying automobile coverage, which the

agent failed to disclose. *Id.* at 2001 Md. App. Lexis 188 *35. In *Sadler*, the issue was not whether higher limits were available, but rather, advice as to the adequacy of the limits.

Steven E. Leder
Susan E. Smith
Niles, Barton & Wilmer
Baltimore, MD