

Law Trends

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Duty to Recommend Umbrella Policy

By Stuart J. Goldberg

How much auto liability and uninsured motorist coverage should a driver purchase? The decision should accurately reflect the consumer's position in the event of unexpected financial and personal hardship, like being hit by an uninsured motorist. He or she should carefully evaluate what may be lost if inadequate insurance is procured and personal assets and income fail to meet the gap.

Recent case law suggests that not only do consumers have a duty to inquire about the adequacy of their coverage, but insurance agents must take some responsibility as well. If the client relies on the representation and expertise of the agent, a fiduciary relationship may be created. A fiduciary relationship will give rise to a duty to exercise reasonable care in advising the client about the terms of the requested coverage.

A responsible insurance agent should ask about his or her client's earnings and assets to assess what the client stands to lose. At least one Ohio court of appeals concluded that an agent exercising reasonable care should offer umbrella coverage when advising clients. In *Wodrich v. Farmers Inc. of Columbus*, the agent was asked to procure "proper coverage." The court found this rather ambiguous language was specific enough to cause the client to rely on the agent. The reliance created a fiduciary relationship between the parties. To make an appropriate recommendation, an agent may need to ask the client about his or her income and assets. Failure to do so may result in the agent's liability for the subsequent financial injury suffered by the client.

For more information on legal duties of insurance agents, or how to assertively procure appropriate insurance coverage, please contact Mr. Goldberg by calling 419-241-6000. Mr. Goldberg, a member of the Firm, practices in the areas of insurance coverage, commercial litigation, products liability, personal injury, health care litigation and employment law.

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