

Defense Verdict - - Insurance Agent E&O/Alleged Forged Signature on Policy Application

The plaintiff alleged an agency producer forged his signature on a new dwelling fire application which lowered plaintiff's property coverage by \$232,000. A fire occurred three months after issuance of a new policy, written by the Fair Plan, in March 2005. The plaintiff said he only ever signed one application, in December 2003, and believed coverage with his previous insurer, Hanover, was still in place at the time of the fire. The producer testified he did sign the plaintiff's name to the Fair Plan application, but with the permission of the insured and at his direction.

The plaintiff denied he asked the producer to obtain less expensive coverage, or that he directed the producer to sign his name to a policy application. The plaintiff also denied knowing anything about a new policy. He testified he did not receive in his mail a premium bill and a new policy accompanied by a cover letter (asking him to review his coverages for accuracy) in the weeks after the coverage was bound. He denied speaking on the phone with the agency operations manager about the premium bill on the new policy. He did admit it was his signature on the back of a return premium check from Hanover, but denied this scotched any belief that policy could still be in force.

The plaintiff testified the insurance coverage on his new policy was \$50,000 less than his mortgage, and he never would have agreed to have coverage for less than the amount of his obligations. In response, it was shown the plaintiff missed two payments on his auto insurance, his policy was then cancelled for non-payment, and he drove for three months without auto coverage. He obtained a new auto policy, paying cash up front, four days before the fire. The plaintiff acknowledged the agency had no knowledge regarding the amount of his mortgage.

To rebut the plaintiff's claim he never received a declarations page of his new policy, the agency offered in evidence a copy of the declarations imprinted by a fax machine showing it was faxed from the plaintiff's workplace on the date of the fire, two hours after the fire. The plaintiff claimed he did

not have the declarations page, and could not explain it (he had produced that document to the agency in discovery, so could not claim it was a fraud). He admitted he was at work when he first learned of the fire.

The plaintiff did not immediately report the fire to the agency, which learned of the fire by reading about it in the newspaper. The plaintiff's public adjuster testified the plaintiff's fire loss exceeded \$479,000, the amount of the previous Hanover policy.

The agency's computer notes regarding the plaintiff's account were offered in evidence and included an entry stating the insured called (one day before his Fair Plan policy was procured) asking the status of his "new policy." The agency president and operations manager testified the agency's computer running notes on a client's account cannot be deleted or changed after they are entered. The agency operations manager testified she spoke with the insured on the phone one week later about his premium bill on the new policy, and in follow up mailed him a speed memo with the bill. The producer testified he signed the application and obtained the new policy with the plaintiff's permission, in keeping with the course of dealing between them (he signed two earlier applications also).

Finally, it was established the agency had no financial incentive in obtaining a new policy, since its commission with the existing Hanover policy was \$306, and the new Fair Plan policy was \$144. The plaintiff could not explain why an agent working on commission would forge his signature to obtain less coverage at a cheaper premium, especially since the Fair Plan's commission rate was significantly lower.

The case was tried to a jury of seven in District Court, which found the agency not negligent. The agency's motion at the inception of the case to compel the plaintiff to refile the suit in Superior Court was denied, despite the fact the plaintiff sought \$407,000 in his statement of damages.

Greaves v. Knight-Dik Ins. Agency, Worcester District Court, Civil Action No. 0562CV0128.

