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IN THE COURT OF APPEALS OF IOWA

Filed June 29, 1982

**EDNA HATCH**, Executor of the Estate of Edward G. Monthei,

Plaintiff-Appellant,

vs.

**COPELAND INSURANCE AGENCY, INC.**,

Defendant-Appellee.

2-182
2-67289

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Appealed from Greene District Court — M. D. Sieser, Judge.

Plaintiff executor appeals from adverse judgment in negligence claim against defendant insurance agency based upon alleged negligence in securing adequate limits of liability. AFFIRMED.

Robert L. Horak, of Pauley, Horak & Mumma, Jefferson, and Gregory J. Siemann, of Green & Siemann, Carroll, for the plaintiff-appellant.

Eugene Davis and Robert C. Rouwenhorst, of Davis, Grace, Horvath, Gonnerman & Rouwenhorst, P.C., Des Moines, for the defendant-appellee.

Considered by Snell, P.J., Carter and Johnson, JJ.

Plaintiff executor appeals from adverse judgment on a negligence claim against the defendant, which is an independent insurance agency. It is alleged that the defendant agency was negligent in failing to secure adequate limits of liability for plaintiff's decedent.

The defendant agency succeeded to the interests of a predecessor agency as agent of record on a line of casualty and liability insurance with plaintiff's decedent (Mr. Monthei). In reviewing the coverages afforded Mr. Monthei and other clients of the agency, defendant sent out form letters advising certain clients, including Mr. Monthei, that certain of their insurance coverages were inadequate.

As a result of this correspondence, Monthei's daughter and son-in-law encouraged him to contact defendant to seek increased limits on Monthei's automobile liability policy (existing limits were $50,000/$100,000) plus a million dollar umbrella policy for both automobile and farm liability. At the time of the resulting application, Mr. Monthei was 89 years of age. The defendant agency in response to this request successfully obtained from AID Insurance Company an increased automobile liability limit of $100,000/$300,000. This limit corresponded with the required underlying insurance for an AID umbrella policy of one million dollars for automobile and farm liability. When the umbrella policy was applied for AID declined to issue it because of a large number of previous farm liability claims against Mr. Monthei. Upon being notified of this circumstance, the defendant agency advised Mr. Monthei of the decision on the application to AID Insurance Company and suggested that if he wished to pursue the matter further that he do so through another agency.

After plaintiff's decedent, Mr. Monthei, was required to pay an excess automobile liability claim over and above the increased $100,000/$300,000 limit of the AID automobile policy, this action was commenced. Plaintiff claims that the

defendant agency was negligent in two particulars: (1) in failing to raise the automobile liability limits above $100,000/$300,000; and (2) in failing to obtain the million dollar umbrella policy. The trial court found as to the first issue that it is unlikely that a higher limit could have been obtained on an automobile policy written to a person of Mr. Monthei's age. The sufficiency of the evidence to support this finding is not challenged on appeal. We therefore must accept this finding as a verity and we believe that it precludes recovery for alleged negligence in not obtaining a higher limit on the automobile liability policy.

As to the claim of negligence in not securing the umbrella coverage the trial court found that notice to the insured by defendant that the application to AID had been rejected and the advice to seek further assistance through another agency insulated the defendant from liability for not securing umbrella coverage. The trial court expressed this conclusion in terms of the doctrine of proximate cause, a matter which is strenuously challenged on appeal by plaintiff. While we are less than certain that the issue is one of proximate cause, we deem the trial court's ultimate conclusion from the facts to be correct. The notice to the insured to seek assistance through another agency terminated defendant's obligation to pursue the matter further. See generally, 3 Am. Jur.2d Agency § 40 (1962). The record discloses no basis for imposing a nonrevocable agency upon defendant to seek additional insurance coverage for plaintiff's decedent. The trial court's determination is correct and is affirmed.

AFFIRMED.