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Case Bulletin: Insurance Law

Pennsylvania Superior Court rules that insurance brokers do not have a duty to inspect a business property and recommend insurance based on that inspection

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Mark and Elizabeth Wisniski, t/d/b/a Saturn Surplus, Appellants, v.
Brown & Brown Insurance Company of PA, Donald Blood and Will
Rineer, EMC Ins. Co. and Scott W. Ahlstrom, Appellees
No. 797 MDA 2003 — Opinion Dated August 15, 2006

The question before the Pennsylvania Superior Court was whether insurance brokers have a duty to inspect a business property and recommend insurance based on that inspection.

In 1994, the Plaintiffs allege that they contacted the Brown Agency in 1994 through its agents, Donald Blood and Will Rineer, to obtain commercial business insurance for their property located at 3284 Route 147, Millersburg, Dauphin County. Upon contacting the Brown Agency, the Plaintiffs claim that Defendants, Blood and Rineer, requested information about the building, and recommended commercial property and liability coverage, but did not inspect the property before selling the policy to the Plaintiffs. In September, 1994, the Plaintiffs purchased a commercial insurance policy from the Defendant, Brown Agency, which was placed with Defendant EMC. Subsequently, on September 7, 1999, the Plaintiffs suffered damage to their property and its contents when the stream traversing their property overflowed and flooded the Plaintiff's building. When the Plaintiffs notified the Brown Agency of the loss, they were informed that there was no coverage for flood damage. The Plaintiffs filed suit against the Brown Agency and EMC alleging that the Defendant breached a duty to "exercise the skill and knowledge normally possessed by members of the insurance profession in good standing in similar communities."

Defendants, the Brown Agency and EMC filed Motions for Summary Judgment. The trial court granted the Brown Agency's Motion for Summary Judgment, which the Plaintiffs appealed. The Superior Court heard the Plaintiffs' appeal on the merits and the Defendant, Brown Agency appealed from the decision of the Superior Court. The Supreme Court of Pennsylvania granted Defendant, Brown Agency's Petition for Allowance of Appeal and issued an Order vacating the Superior Court's decision and remanded the case to the Superior Court for reconsideration of whether a duty exists for insurance brokers to inspect a business property and advise clients based on the inspection by applying the five prong test as set forth in *Althaus v. Cohen*, 756 A.2d 1166 (Pa. 2000).

In *Althaus*, the Supreme Court set forth a five factor test for determining whether a duty exists to maintain a negligence action. The five factors which must be weighed to determine whether a duty exists are as follows:

- The relationship between parties;
- The social utility of the actor's conduct;
- The nature of the risk imposed and foreseeability of the harm incurred;
- The consequences of imposing a duty upon the actor; and
- The overall public interest in the proposed situation.

The Court held that the *Althaus* factors did not weigh in favor of recognizing a broker's duty to inspect business premises and advise clients based upon that inspection. The Court determined that the time and expense of inspecting every property might outweigh the relative value of the inspection and that a knowledgeable insured may be able to provide all the information necessary for adequate coverage in an interview. Further, the Court was concerned with extending the duty to brokers, not insurance companies or agents because the brokers primarily are in the business of acting as an intermediary between the insurance companies and clients. Additionally, the Court found that it would be far from clear where the duty to inspect would end and that the duty to inspect would unreasonably diminish the insured's own responsibility to ascertain and ask for appropriate coverage. Based on the foregoing, the Pennsylvania Superior Court affirmed the trial court's grant of Summary Judgment in favor of the Brown Agency.