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Contracts - Enforcing a Contract to Procure Insurance When the Promisor Is Not an Insurance Agent or Broker - Action Ads, Inc. v. Judes

Russ Bean

CASE NOTES

Contracts—Enforcing a Contract to Procure Insurance when the Promisor is not an Insurance Agent or Broker. ***Action Ads, Inc. v. Judes,*** **671 P.2d 309 (Wyo. 1983).**

Action Ads, Inc., a Wyoming corporation which sells advertising-related products, was planning to expand its markets in 1981. On April 23, 1981, it hired Kenneth Judes as a salesman in the Sheridan area. Mr. Judes' duties were to call on prospective clients, sell the products, place orders, and provide ongoing service to the clients.[1]

Among other items in the employment contract, Mr. Judes was promised that "sixty days from your date of hire, Action Ads Inc. will provide a medical insurance program for you and your dependents."[2] However, no other terms regarding the amount of coverage, type of coverage, premium, or insurer were mentioned. This contract was signed on April 23, 1981, and Mr. Judes began working that day.

Unfortunately, Mr. Judes was not successful at his new job. During his employment of seven months, he recruited only eight new customers and received a mere $580.09 in commissions.[3] Mr. Judes' income was based solely on commissions, thus his earnings were severely deficient. In fact, during his employment with Action Ads, Mr. Judes supplemented his income by receiving $2,448.00 in unemployment benefits.[4] In August, 1981, Mr. Judes purchased a truck and began hauling mobile homes to further augment his income.[5] He then worked only part time for Action Ads.

In August of 1981, Mr. Judes was informed that Action Ads had never obtained a medical insurance policy for him. He was told that he would not be covered until he produced a volume of sales sufficient to support the policy. In November of 1981, Mr. Judes was severely burned in a liquid propane gas explosion inside his mobile home. When Mr. Judes found that he still did not have medical coverage through Action Ads, he brought suit for breach of contract.

The trial court agreed with Mr. Judes that Action Ads had breached its employment contract by failing to procure the medical insurance program and awarded Mr. Judes $18,824.86, the total amount of his medical expenses, plus costs, even though it could not be determined from the contract what type of insurance program would have been obtained if the contract had been performed.[6] The Wyoming Supreme Court reversed, stating that the agreement to procure insurance was too uncertain and indefinite to be enforceable.[7] The court felt that Mr. Judes needed to prove the essential elements of an insurance contract, that is, the subject mat-

1. Action Ads, Inc. v. Judes, 671 P.2d 309, 310 (Wyo. 1983).
2. *Id.*
3. Brief for Appellant at 4, Action Ads, Inc. v. Judes, 671 P.2d 309 (Wyo. 1983).
4. *Id.*
5. *Id.*
6. *Action Ads*, 671 P.2d at 310.
7. *Id.* at 312.

ter of the contract, the risk insured against, the amount of coverage, the duration of coverage, and the premiums to be paid before the contract could be enforced.[8]

The court, however, specifically declined to say whether this same rule would apply if the person who was to procure the insurance was an insurance agent or broker.[9] The court felt that with an insurance agent or broker, an enforceable contract may arise even though it remains up to the agent[10] to supply some of the essential terms of the contract. This view was expanded and reinforced in a concurring opinion, which claimed that the rules applied to one in the business of selling insurance are different from the rules applied to one in the position of Action Ads.[11] When someone is not in the business of selling insurance, ordinary contract rules apply rather than rules applicable to an insurance agent.[12]

In this casenote, the contract rules applicable to insurance agents and brokers will be reviewed and compared with the principles which apply to non-agents. The differences underpinning the separate rules will also be analyzed and questioned.

AGENTS AND BROKERS

Action Ads should be compared with *Hursh Agency, Inc. v. Wigwam Homes, Inc.*[13] In *Hursh*, a modular home seller needed an installation floater.[14] The seller phoned John Hursh, president of Hursh Agency but not a licensed insurance agent, and asked for an installation floater like the ones she had received for prior installations. The seller gave the descriptive information to a secretary of Hursh Agency after speaking to Mr. Hursh. No binder or policy, however, was ever issued. The Wyoming Supreme Court stated the general rule that "a broker or agent who, with a view to compensation for his services, undertakes to procure insurance for another and through fault or neglect fails to do so, will be held liable for any damage resulting."[15]

This is certainly the accepted rule for an agent or broker.[16] The agent has a duty to exercise reasonable care and diligence to procure the requested insurance or to notify the client if he cannot.[17] If the agent fails to procure the insurance he may be liable to the prospective insured either

8. *Id.* at 311.
9. *Id.* at 311 n.1.
10. Throughout the rest of the text, unless indicated otherwise, "agent" will be defined to mean both an insurance agent and an insurance broker.
11. *Action Ads*, 671 P.2d at 313 (Raper, J., concurring).
12. *Id.*
13. 664 P.2d 27 (Wyo. 1983).
14. An installation floater is a short term policy to protect property while it is being installed. *Id.* at 30.
15. *Id.* at 32.
16. Annot., 64 A.L.R. 3D 398 (1975), *cited with approval in* Hursh Agency, Inc. v. Wigwam Homes, Inc., 664 P.2d 32 (Wyo. 1983).
17. Arcenaux v. Bellow, 395 So. 2d 414, 418 (La. App. 1981), *cert. denied*, 400 So. 2d 669 (La. 1981).

for breach of contract or in tort for negligently failing to perform a duty imposed by contract.[18] The prospective insured may pursue either the breach of contract theory or the tort theory, or plead in the alternative, although double recovery is not allowed.[19]

It is interesting that by agreeing to procure an insurance policy, the agent obligates himself not only in contract, but also in tort. Normally, a mere gratuitous promise imposes no tort obligation,[20] but if an agent promises to obtain insurance upon the receipt of an application, he must use reasonable care in performing his promise.[21] When an agent accepts an application for insurance, he accepts an affirmative undertaking, which legally obligates him to act with reasonable diligence either to secure a policy or to notify the applicant of his rejection.[22] Thus, as *Talbot v. Country Life Insurance Co.*[23] indicates, an agent's obligations arise from the negligence principle, "that one who enters upon an affirmative undertaking, to perform services to another, is required to exercise reasonable care in performing it, to avoid injury to the beneficiary of the undertaking."[24]

The insurance agent may also be held liable to persons other than the applicant. Recent cases have extended the agent's liability to the other beneficiaries of the policy either in tort[25] or as third party beneficiaries of a breached contract.[26] This seems to be a reasonable extension of the previous principles.[27]

Not only may the agent be held liable when there has been a completed application, but he may be held liable even though some essential terms are missing. It has generally been the accepted rule that an agent incurs no liability if he does not have sufficient information to complete the contract.[28] This rule, however, has been steadily eroded.[29] Courts may now require agents to supply some missing terms by themselves. The reasoning is that insurance agents are increasingly seen as professionals in their field[30] and held to a higher standard of conduct.[31]

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18. 3 ANDERSON, COUCH ON INSURANCE 2D § 25:46 (1960).
19. Keller Lorenz Co. v. Insurance Assocs. Corp., 98 Idaho 678, 570 P.2d 1366 (1977).
20. W. PROSSER, TORTS § 56, at 344 (4th ed. 1971).
21. *Id.* at 345.
22. Talbot v. Country Life Ins. Co., 8 Ill. App. 3d 1162, 1164, 291 N.E.2d 830, 832 (1973).
23. *Id.*
24. *Id.* at 1165, 291 N.E.2d at 832. It would seem that this principle would be applicable to anyone who undertakes to procure an insurance policy. This reasoning will be developed more extensively later in the casenote in a discussion of alternative avenues for a person in Mr. Judes' position.
25. Rae v. Air Speed, Inc., 386 Mass. 187, 435 N.E.2d 628 (1982).
26. Hamer v. Kahn, 404 So. 2d 847 (Fla. Dist. Ct. App. 1981).
27. *See* Note *Contract Law: Extension of Third Party Beneficiary Direct Actions Against Insurance Agents*, 12 STETSON L. REV. 282, 288-96 (1982).
28. 43 AM. JUR. 2D *Insurance* § 139 (1982).
29. Several specific cases will be discussed, but for a general review of the cases, see Annot. 64 A.L.R. 3D 398, 406-07, 436-44 (1975).
30. Thompson, *The Liability of Insurance Agents and Brokers*, 17 FORUM 1050, 1052 (1982).
31. Riddle-Duckworth, Inc. v. Sullivan, 253 S.C. 411, 420, 171 S.E.2d 486, 490 (1969).

The best analysis of contracts to procure insurance[32] and the proof of their terms can be found in *Hamacher v. Tumy.*[33] In that case, an owner of a sawmill made improvements to his property and sought to procure additional insurance. Although no agreement was ever reached as to the insurable value of the property, both parties agreed that the amount of insurance should approximate ninety-five percent of the insurable value. When the sawmill was damaged by fire and no additional insurance had ever been procured, the owner sued his insurance agent.[34] The agent responded that a contract to procure insurance must be proved with the same certainty as a contract of insurance, relying on *Rodgers Insurance Agency v. Anderson Machinery.*[35] The *Hamacher* court held that in a contract to procure insurance, the buyer is seeking the services of the agent in obtaining the best possible terms consistent with the buyer's insurance needs.[36] Thus, a contract to procure insurance could arise even though some facts essential to the creation of the ultimate contract are left to the agent.[37] While the agent must have sufficiently definite directions from the buyer to procure a policy, the parties need not expressly agree on all of the essential terms of the contract.[38] The essential terms may be found by implication.[39]

Essential terms of a contract of insurance are often implied from previous contracts or dealings between the parties,[40] but they may also be implied from the "well known standards" of insurance and premiums.[41] Also, as stated in *Bulla v. Donahue,*[42] a court may imply the terms from a previous policy not procured by the present agent.[43] The only requirement is that the terms be sufficiently detailed to enable the insurance agent to obtain the best possible terms commensurate with the buyer's insurance needs.[44] Obviously, if an agent's duty is to secure the best possible terms for his client, the contract for the procurement of insurance will not expressly contain all the essential terms of the insurance contract.[45] Some courts have recognized this and simply stated that it is not required

32. Note that this casenote deals only with contracts to procure insurance. A very different result may be obtained with contracts of insurance, which may require all essential terms to be stated in order to be enforced. For a discussion of that topic, see Annot. 72 A.L.R. 3D 704, 735, 747 (1976).

33. 222 Or. 341, 352 P.2d 493 (1960).

34. *Id.* at 345, 352 P.2d at 495-496.

35. 211 Or. 459, 316 P.2d 497 (1957).

36. *Hamacher,* 222 Or. 341, 349, 352 P.2d 493, 497 (1960).

37. *Id.*

38. *Id.* The essential terms of an insurance contract were set out by the Wyoming court in *Action Ads,* i.e. the scope of the risk, the subject matter to be covered, the duration of the insurance, and premiums. 671 P.2d at 311.

39. *Hamacher,* 222 Or. 341, 350, 352 P.2d 493, 497 (1960).

40. 16 APPLEMAN, INSURANCE LAW AND PRACTICE § 8831 (1981).

41. Marshel Investments, Inc. v. Cohen, 6 Kan. App. 2d 672, 683, 634 P.2d 133, 142 (1981) *quoting* Rezac v. Zima, 96 Kan. 752, 153 P. 500 (1915).

42. 174 Ind. App. 123, 366 N.E.2d 233 (1977).

43. *Id.* at 128, 366 N.E.2d at 237.

44. *Id.*

45. *See* Hamacher v. Tumy, 222 Or. 341, 349, 352 P.2d 493, 497 (1960); Lawrence v. Francis 223 Ark. 584, 589, 267 S.W.2d 306, 308-09 (1954).

that the contract to procure insurance set forth all the terms of the contract of insurance.[46]

The Wyoming Supreme Court in *Hursh* was following a general line of cases which holds an insurance agent to a much higher level of care than any other person who might promise to procure insurance.[47] Not only is an agent's duty of care higher, but he may also be responsible for supplying some terms of an insurance contract himself. He is considered an expert in his field by many courts, skilled enough to supply essential terms of the contract without his client ever mentioning them.[48]

NON-AGENTS

A different test, however, is applied when the one promising to procure insurance is not an insurance agent. In this case, ordinary contract principles apply.[49] This means that the terms of the contract must be reasonably certain.[50] Indeed, the court in *Action Ads* required Mr. Judes to prove the elements of the insurance policy with sufficient certainty.[51]

Again, this is in accord with the great weight of authority.[52] It is also the predecessor of the rules described above in relation to insurance agents.[53] It used to be that with either a contract of insurance or a contract to procure insurance, the damaged buyer had to prove the essential elements of the contract in order to hold both agents and non-agents liable.[54] Damaged buyers are no longer so restricted if they are fortunate enough to deal with an insurance agent.[55] If they are not so fortunate, damaged buyers may learn that they should have used language "sufficiently definite to enable the court to ascertain to a *reasonable certainty their full and detailed intent.*"[56] A buyer attempting to hold an insurance

46. Sloan v. Wells, 296 N.C. 570, 573, 251 S.E.2d 449, 451 (1979), *citing* Mayo v. American Fire and Casualty Co., 282 N.C. 346, 192 S.E.2d 828 (1972), *cited with approval in Hursh Agency*, 664 P.2d at 34 n.5 (Wyo. 1983).

47. *See supra* text accompanying note 16.

48. *See supra* text accompanying note 46. This is why the Wyoming Supreme Court took care to point out that Action Ads, Inc. was not an insurance agent. *Action Ads*, 671 P.2d at 311 n.1. Action Ads would then have had to meet a higher test.

49. *Action Ads*, 671 P.2d at 313 (Raper, J. concurring).

50. RESTATEMENT (SECOND) OF CONTRACTS § 33 (1981) states:

> (1) Even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain.
>
> (2) The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.
>
> (3) The fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance.

51. 671 P.2d at 312.

52. *See* 1 WILLISTON, CONTRACTS § 37 (3d ed. 1957).

53. *See* Annot., 92 A.L.R. 232, 234 (1934).

54. *Id.; See also* Annot., 15 A.L.R. 995, 999 (1921).

55. *See supra* text accompanying notes 27-47 concerning agents and brokers.

56. Forster-Davis Motor Co. v. Slaterbeck, 186 Okla. 395, 98 P.2d 17 (1939) (emphasis added), *cited with approval in* Action Ads, Inc. v. Judes, 671 P.2d at 311-12.

agent liable will be allowed to imply some of the terms left out of the contract to procure insurance, but one attempting to hold a non-agent liable will not.

ANALYSIS OF ACTION ADS

The division between the rules applied to agents and the rules applied to non-agents was explicitly made in *Maryland Casualty Co. v. Clean-Rite Maintenance Co.*[57] That case distinguished *Hamacher v. Tumy*[58] on the basis that *Hamacher* concerned an insurance agent, whereas the person who was to procure insurance in *Maryland Casualty* was not.[59] The *Maryland Casualty* court reasoned that if a person who promised to procure insurance was not an insurance agent and did not hold himself out as possessing any particular expertise in the field, then the damaged buyer must prove the elements of the contract with sufficient certainty.[60]

The court in *Action Ads* maintained this division,[61] but this division may not be sound. An employer who tells his employee that the company will buy his insurance certainly is not an insurance agent.[62] He is not working for the insurance company.[63] He is merely procuring an insurance policy. Nor is the employer a broker,[64] because he does not charge a fee to procure the policy. He is not in the business of procuring insurance for the public.[65]

However, the analysis should not stop simply because an employer does not meet the definitional requirements of an insurance agent or broker. Certainly, an employer who promises to procure insurance for his employee becomes some kind of agent.[66] While there are serious questions

57. 380 F.2d 166 (9th Cir. 1967), *cited with approval in Action Ads*, 671 P.2d at 312.
58. 222 Or. 341, 352 P.2d 493 (1960).
59. Maryland Casualty Co. v. Clean-Rite Maintenance Co., 380 F.2d 166, 167 (9th Cir. 1967).
60. *Id.*
61. 671 P.2d at 311 n.1, *citing* Maryland Casualty Co. v. Clean-Rite Maintenance Co., 380 F.2d 166 (9th Cir. 1967).
62. WYO. STAT. § 26-1-102 (1977) states in part:
(a)(ii) "Agent," except as otherwise provided in W.S. 26-9-103, means any individual, firm or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance or annuities on its behalf, and if authorized to do so by the insurer, to carry out and countersign insurance contracts.
63. *See* 16a APPLEMAN, *supra* note 40, at § 8725.
64. WYO. STAT. § 26-1-102 (1977) states in part:
(a)(vi) "Broker," except as used in chapter 11 of this code, means a resident individual, firm or corporation organized under the laws of the state of Wyoming who, not being an agent of the insurer, as an independent contractor and on behalf of the insured, for compensation or fee solicits, negotiates or procures insurance or the renewal or continuance thereof for insureds or prospective insureds, other than himself.
65. *See* 16a APPLEMAN, *supra* note 40, at § 8726.
66. RESTATEMENT (SECOND) OF AGENCY § 1 (1957) states:
(1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.
(2) The one for whom the action is to be taken is the principal.
(3) The one who is to act is the agent.

as to whether the employer is subject to the control of the employee,[67] the conventional rule is that an employer is an agent of the insured rather than an agent of the insurance company.[68] One who assumes to procure insurance for another becomes that person's agent.[69] Indeed, some courts would say that one who assumes to procure insurance for another becomes an *insurance* agent for that person.[70]

Whether or not an employer is termed an insurance agent, the proof of the terms of the contract should be the same. The court in *Maryland Casualty Co. v. Clean-Rite Maintenance Co.*,[71] while attempting to distinguish *Hamacher v. Tumy*,[72] did not destroy *Hamacher's* basic proposition that in proving a contract to procure insurance, certain essential terms may be implied.[73] In fact, the court in *Maryland Casualty* quoted with approval *Hamacher's* proposition that an agent needs only "sufficently definite directions from his principal to enable him to consummate the final insurance contract."[74] If the court in *Maryland Casualty* had properly applied this test to agents who were not insurance agents, then they would have reached a different conclusion.[75] This flaw in the reasoning of *Maryland Casualty* has been recognized by other courts.[76] While a contract does indeed require "sufficient certainty in the proof of its terms"[77] in order to be enforceable, "it is permissible to infer the elements of the contract from past business dealings of the parties, their conversations and business customs."[78] All that needs to be explicitly stated is a mutual assent to the procurement of insurance.[79] It is a general proposition that a court will, if possible, attach a sufficiently definite meaning to a bargain of parties who evidently intended to enter into a binding contract.[80]

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67. *See* Nidiffer v. Clinchfield R.R., 600 S.W.2d 242, 245-46 (Tenn. App. 1980).

68. 1 APPLEMAN, *supra* note 40, at § 43.

69. Warrener v. Federal Land Bank of Louisville, 266 Ky. 668, 674, 99 S.W.2d 817, 820 (1936).

70. Estes v. Lloyd Hammerstad, Inc., 8 Wash. App. 22, 25, 503 P.2d 1149, 1151 (1972); Hardcastle v. Greenwood Savings and Loan Ass'n, 9 Wash. App. 884, 887, 516 P.2d 228, 231 (1973).

71. 380 F.2d 166 (9th Cir. 1967).

72. 222 Or. 341, 352 P.2d 493 (1960).

73. *Id.* at 350, 352 P.2d at 497.

74. Maryland Casualty Co. v. Clean-Rite Maintenance Co., 380 F.2d 166, 168 (9th Cir. 1967) *quoting Hamacher*, 222 Or. at 350, 352 P.2d at 497 (1960). This quote is phrased in terms of principal and agent, rather than insured and insurance agent.

75. This is assuming, of course, that the terms were capable of being implied.

76. *See* Howarth v. First Nat'l Bank of Anchorage, 596 P.2d 1164 (Alaska 1979); Silver v. Daniel, 156 Mont. 143, 477 P.2d 516 (1970).

77. *Maryland Casualty*, 380 F.2d at 167-168 *quoting Hamacher*, 222 Or. at 350, 352 P.2d at 497 (1960).

78. Howarth v. First Nat'l Bank of Anchorage, 596 P.2d 1164, 1168 (Alaska 1979). This case involved a bank, rather than an insurance agent.

79. *See* State v. Fairbanks North Star Borough School Dist., 621 P.2d 1329, 1331 n.3 (Alaska 1981) *distinguishing* Howarth v. First Nat'l Bank of Alaska, 596 P.2d 1164 (Alaska 1979).

80. RESTATEMENT (SECOND) OF CONTRACTS § 33 comment a (1981); 1 WILLISTON, CONTRACTS § 37 (3d ed. 1957).

In *Action Ads*, it is uncertain whether Mr. Judes would have had the evidence to imply the terms of his contract.[81] The Wyoming Supreme Court may have been ultimately correct in refusing recovery, but the court should have remanded the case and allowed Mr. Judes to attempt to imply the terms. The written employment contract plainly stated that Action Ads would provide a medical insurance program to Mr. Judes. Both parties intended to be bound by this statement.[82] If Mr. Judes could have proved the terms of the insurance contract by implication, then he should have been allowed to recover damages for breach of contract. It should not be a requirement for Mr. Judes' recovery that all essential terms of the contract of insurance be explicit in the contract to procure insurance.

As an alternative to a suit for breach of contract, Mr. Judes could have sued in tort for negligent performance of a contract.[83] When one promises to acquire insurance for another, he becomes in law that person's agent.[84] As an agent for the prospective insured, he owes a duty to his principal to exercise the skill which is standard for that kind of work.[85] Therefore, an agent may be liable for nonperformance of his duties.[86]

It should be noted that a different result may be reached if the agency is gratuitous. Courts are divided on whether a gratuitous agent must begin performance before he renders himself liable.[87] However, in *Action Ads*, the promise to procure insurance was supported by consideration: Mr. Judes' promise to go to work.[88] Thus, the court could find that the agency was not gratuitous. Mr. Judes may have had more success with the Wyoming Supreme Court if he had chosen to bring his suit in tort.

CONCLUSION

Action Ads requires a damaged buyer to establish with sufficient certainty the essential terms of a contract of insurance in order to recover for a breach of a contract to procure insurance, if the other party is not

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81. In fact, Mr. Judes did have a method of implying the terms of the insurance contract. Most of the workers at Action Ads were covered by an insurance policy issued by Blue Cross/Blue Shield through Pioneer Printing, a companion business of Action Ads. Brief in Support of Petition for Rehearing by Action Ads at 2, Action Ads, Inc. v. Judes, 671 P.2d 309 (Wyo. 1983).

82. *Action Ads*, 671 P.2d at 314-15 (Brown, J., dissenting).

83. It does not appear from the opinion or the briefs of the parties that any claim was made under Tort law.

84. Estes v. Lloyd Hammerstad, Inc., 8 Wash. App. 22, 25, 503 P.2d 1149, 1151 (1972).

85. RESTATEMENT (SECOND) OF AGENCY § 379 (1957) states in part:

> (1) Unless otherwise agreed, a paid agent is subject to a duty to the principal to act with standard care and with the skill which is standard in the locality for the kind of work which he is employed to perform and, in addition, to exercise any special skill that he has.

86. Estes v. Lloyd Hammerstad, Inc., 8 Wash. App. 22, 26, 503 P.2d 1149, 1152 (1972).

87. *See* RESTATEMENT (SECOND) OF AGENCY § 378 (1957); RESTATEMENT (SECOND) OF TORTS § 323 (1965); *but cf.* Estes v. Lloyd Hammerstad, Inc., 8 Wash. App. 22, 25, 503 P.2d 1149, 1151 (1972).

88. *See* Warrener v. Federal Land Bank of Louisville, 266 Ky. 668, 674, 99 S.W.2d 817, 820 (1936) (mortgage is consideration for promise to procure insurance if the promise is made contemporaneously with the execution of the mortgage).

an insurance agent. On the other hand, *Hursh Agency* and dictum in *Action Ads* provide that where the promisor is an insurance agent, some terms may be left out of a contract to procure insurance and the damaged buyer may prove these terms by implication. Further, any person who contracts to procure insurance may be liable in tort for his negligent failure to perform his contract or his failure to notify his client if he cannot procure the insurance. Logic dictates that the same rules which apply to insurance agents should apply to anyone who contracts to procure insurance. Even though an insurance agent may be considered to be more skilled than a non-agent and held to a higher standard of care, the required proof of the terms of the contract to procure insurance should be the same. A damaged buyer should be able to imply the forgotten terms of a contract to procure insurance whether he dealt with an insurance agent or not. In either case he has been promised an insurance policy and was later disappointed.

RUSS BEAN