PUBLICATION UPDATE

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Responsibilities of Insurance Agents and Brokers

Publication 362 Release 88 June 2022

HIGHLIGHTS

- New analyses throughout the publication of over 50 recent court decisions involving the responsibilities of insurance agents and brokers.

Ch. 1, Introduction to Legal Responsibilities of Insurance Agents and Brokers, updated.

§ 2.02[1], Business Definitions of Agents and Brokers, expanded with new subsections on Retail and Wholesale Brokers and Unaffiliated Agents.

§ 2.05[7] has illustrative cases from 27 jurisdictions on issues involving notice of a loss from an insured or third party being given to an insurance agent or broker.

§ 2.06 discusses the statutory prescriptions of authority of agents and brokers in 26 jurisdictions.

New § 3.02[3][b] on insurance agent and broker liability issues and jurisdiction issues with respect to losses stemming from COVID-19.

New § 3.05[1][b][ii] on the use of expert testimony on established standards of care as to insurance brokers' duty to advise their customers.

New § 3.05[1][c][ii] on the use and admissibility of expert testimony on the fiduciary duty of brokers.

§ 3.06[3] reports on cases applying precedents from 30 states and D.C. on how the obligation of insureds to read their insurance policies and applications affects the outcomes of their insurance claim disputes.

New § 3.07[3] on the limits of the duty of brokers to place insurance providing the best available terms.

§ 3.12[4][b] reports on cases applying precedents from 24 states on the penalization for bad faith and punitive damages involving insurance agents or brokers.

§ 3.13[1][b] reports on cases applying precedents from 31 states on the duty of insurance agents or brokers to advise customers on options involving uninsured and underinsured motorist coverage.

Revised § 4.07[1] now contains separate discussions of cases where fraud against insurers has allegedly been committed by agents (§ 4.07[1][a]) and by brokers (§ 4.07[1][b]).

New § 4.07[3][a] sets forth the general principles governing agents' fiduciary duties to the insurers who employ them.

New § 4.08[3][a] discusses issues as to insurance agencies' alleged liabilities to the insurance companies that engaged them.

New § 4.08[3][b] discusses issues as to insurers' liabilities to their former agents.

New § 4.08[3][c] discusses issues as to a former employee's alleged liability to his or her former insurance agency.

§ 5.02[4][b] now has separate discussions of RICO litigation involving the laws of various states.

New § 5.02[11], [12], and [13] respectively discuss the effects of the Federal Product Liability Risk Retention Act ("LRRA"), the National Association of Registered Agents and Brokers Reform Act ("NARAB II"), and the Non-Admitted and Reinsurance Reform Act ("NRRA") on the business of insurance.

§ 5.05[1][b] reports on cases applying precedents from 13 states and Puerto Rico on who is deemed an insurance agent or broker for licensing purposes.

Expanded § 5.05[10] newly reports on multi-state licensing of insurance agents, brokers and producers.

§ 8.01[1] newly reports on recent cases on whether an insurance representative functions as an independent contractor.

Expanded § 8.06[4] on issues involving insurance broker contingent commissions based on profits or volume.

Expanded § 8.12[1] has an augmented discussion on issues arising with regard to the termination of agency contracts.

Expanded § 8.12[3] has an enhanced discussion on public policy and statutes as to restrictions on termination at will.

Since the insuring clause in E&O policies provide coverage for acts arising out of the performance of professional services, expanded § 16.03[2][a][iii] examines what constitutes "professional services" under such policies.

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☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

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