

The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



[Captive Insurance Agent May Be Personally Liable for Misrepresentations Regarding the Scope of Coverage](#)

Monday, October 18th, 2010

In an [unpublished decision](#) dated October 13, 2010, the Court of Appeal (*Gamliel v. Litman*, Second Appellate District, Division Two) held that a claim for negligence against a Farmers insurance agent could go forward even though the agent was acting in the name of the insurance company when he committed the alleged negligent acts.

The agent had placed property insurance for the plaintiffs, but had allegedly failed to deliver a copy of the policy. After a fire which damaged the property, Farmers contended that there was no coverage because the property was unoccupied. In support of their negligence claim, the plaintiffs made these contentions:

- The agent did not advise them that there purportedly was no coverage as a result of the vacancy; and
- The agent assured them that there was coverage “and that [they] had nothing to worry about.”

The Court of Appeal acknowledged the agent’s contention that an insurance agent acting in the name of an insurance company is generally *not* personally liable to the insured for negligence committed within the scope of his or her employment; e.g., negligent failure to process an insurance application or to obtain coverages requested by the insured. The rationale for this general rule is that the agent’s negligence in performing his or her duties owed to the insurer is attributed to the insurance company. However, the court explained, “an insurance company’s agent may be personally liable to someone who purchases insurance in reasonable reliance on the agent’s negligent or intentional misrepresentations regarding coverage or other material policy terms.” Here, the court ruled that the allegations of the agent’s misrepresentations were sufficient to permit the plaintiffs’ negligence claim to go forward.