

# The Professional Liability Law Blog

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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



## Workmen's Auto Ins. Co. v. Guy Carpenter & Co., Inc.: An Insurance Broker's Duties are Defined by Negligence Law, Not Fiduciary Law

05-13-2011 by [Mark Hancock](#)

In a [published decision](#), the California Court of Appeal (Second Appellate District, Division Two) has held that an insurance broker cannot be held liable for breach of fiduciary duty. The decision is *Workmen's Auto Insurance Company v. Guy Carpenter & Company, Inc.*, 2011 Cal. App. LEXIS 533.

The plaintiff insurance company alleged that it had a brokerage agreement with Carpenter which authorized Carpenter to act as a reinsurance intermediary-broker to procure reinsurance for the plaintiff. The plaintiff alleged that the broker did not obtain insurance on the best available terms, and thereby breached a fiduciary duty to the plaintiff. The broker argued in its demurrer and, later on appeal, that it could not be sued for breach of fiduciary duty. Both the trial court and the Court of Appeal agreed with the broker.

The Court of Appeal said that "even if an insurance broker has certain fiduciary like duties [arising out of its role as an agent], it cannot be sued for breach of fiduciary duty in a manner that conflicts with existing insurance law." The court went on to explain that, "[i]n reaching this conclusion we confess that agency law and insurance law are in conflict, resulting in a legal conundrum. That conundrum is resolved only by stare decisis and public policy.

The court went on to review a number of California cases discussing the duties of an insurance broker and concluded that, "the agency of a broker must be viewed only through the lens of insurance law because it is a constellation of rules and policies all its own." After further analysis, the court concluded that insurance law should be given primacy over agency law, and rejected the plaintiff's argument that its "fiduciary duty cause of action alleged breaches of heightened duties not imposed by or subsumed within the duty of care." An insurance broker's duties are defined by negligence law, not fiduciary law.