

[An Insurance Agent Who Portrays Herself As Expert Owes a Heightened Duty of Care to the Insured](#)

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In *Williams v. Hilb, Rogal & Hobbs Insurance Services of California, Inc.*, ___ Cal. App. 4th ___, 2009 WL 2872403 (September 9, 2009), the court held that an insurance agent who portrays herself as having expertise in the particular insurance sought by an insured may owe the insured a heightened duty of care. Further, the failure of an insured to read the policy does not, as a matter of law, render the insured's reliance on the agent's advice unjustifiable.

This case involved a franchise business owner's purchase of an "insurance package" that did not contain workers' compensation insurance, which, under California law, is mandatory. The owners discovered their lack of coverage following a fire that severely injured an employee. The employee sued the owners who in turn sued the insurance agent for negligence for failing to provide the appropriate insurance necessary for their business. In her defense, the agent argued that she did not have a duty to volunteer additional or different insurance coverage and that insured was bound by the "clear and conspicuous" terms of the policy even if they failed to read or understand them. However, the court was not convinced by these arguments.

In most situations, an insurance agent does not have a duty to volunteer that an insured should procure different or additional coverage and only has a duty to procure the insurance requested. However, the court deviated from this rule because the agent held herself out to be an expert in the type of insurance needed to run the Plaintiff's business. Specifically, the agent advertised herself as having sold insurance packages to numerous other franchisees, participated in the risk analysis with the underwriters, visited various operating facilities and proclaimed to the insured that she "was the expert on the product necessary to satisfy [Plaintiff's] insurance needs." Since the agent held herself out to be an expert, she owed the insured a heightened duty of care to provide adequate insurance. This included providing workers' compensation insurance, which the agent testified that she knew was required in California.

The court also addressed a defense asserted by the insurance agent that the business owners were negligent in not reading the policy. Other courts have stated that the insured has a duty to read the policy and will be bound by "clear and conspicuous provisions." However, the court distinguished this case by highlighting the fact that here, the insurance agent owed a heightened duty of care. Based on the heightened duty of care, there was an issue of fact as to whether the Plaintiff reasonably relied on the insurance agent's self-proclaimed expertise. Therefore, the Plaintiff's negligence was not established as a matter of law. Further, the court stated that whether an insured has a duty to read the policy cannot be addressed "without an analysis of the surrounding facts."