



### ***In Absence of Special Relationship, Insurer Owes No Duty to Advise on Adequacy of Coverage***

**From the desk of Kyle D. Riley:** In motor vehicle accidents, especially accidents resulting in severe injuries, claims against the at-fault insured may often exceed the insured's policy limits. But can the insured file a third-party complaint against the insurer and argue that the insurer owed a duty to advise them on the adequacy of coverage and policy limits? Read on to find out.

**Claims Pointer:** In this case arising out of a pedestrian injured by a driver, the Washington Court of Appeals considered whether the driver's insurer owed the driver a duty to advise, review, or counsel regarding the adequacy of insurance coverage. The court ruled that because the driver failed to offer evidence of a special relationship between the insurer's agents and the driver, the insurer and its agent owed no duty to advise, review, or counsel the driver on whether coverage was adequate. This case serves as a reminder of the importance of ensuring that insurance agents are aware that their conversations with insureds could expose them and the insurance company to liability.

#### ***Norris v. Farmers Insurance Co., 76236-2-1, Washington Court of Appeals Div. I (March 19, 2018) (unpublished)***

While driving, Jeffrey and Terri Norris (collectively "Norris") struck and caused injuries to Junfang He ("the pedestrian"). The pedestrian filed suit, alleging damages in excess of the liability limits of Norris' insurance policy with Farmers Insurance Group ("Farmers"). Farmers extended a settlement offer for the policy limit, but the pedestrian declined the offer. Norris filed a third-party complaint against Farmers, alleging that Farmers was negligent in advising and counseling Norris on their policy limits. Farmers asked the trial court to dismiss the complaint because it owed no duty to Norris and there was no special relationship that may have created a duty. The trial court agreed and dismissed the third-party complaint, and Norris appealed.

The Washington Court of Appeals considered whether Norris had a viable claim for negligence against

Farmers. The court began with a brief explanation of a negligence claim, noting that to bring a negligence claim, the plaintiff is required to establish duty, breach, causation, and damages. In this case, most of the dispute was centered on whether Farmers owed a duty to Norris. Whether a duty exists is not a question of fact for the jury to determine, but instead, "a question of law for the court." According to the court, the insurance company and its agents owe no duty to explain, review or counsel their insured on whether the insured's coverage is sufficient unless a "special relationship" exists between the insured and the agent.

The court considered whether a special relationship existed between Norris and Farmers. The court explained that a special relationship exists in either of two scenarios. First, is where the agent holds themselves out as an insurance specialist and is compensated specifically for consulting or advising on coverage. Alternatively, a special relationship may arise when there is a long-standing relationship between the insured and agent, a conversation regarding an



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## Washington Case Update



insured's question about coverage, and if the insured relied on the agent's answer and expertise to their detriment. In contrast, courts will find that no special relationship exists if the insured never consulted with the agent regarding "adequacy of coverage," and if the agent never offered advice on the adequacy of coverage.

The Washington Court of Appeals found that Norris failed to persuade of a special relationship. Norris offered non-insurance case law to argue that Farmers voluntarily assumed a duty to advise Norris on the adequacy of coverage. In light of well-established case law on the "special relationship" rule in the context of insurance coverage, the court refused to consider the non-insurance law cited by Norris.

Norris argued that a special relationship arose from the latter scenario: (1) a long-standing relationship existed between Norris and agents for Farmers, (2) there were interactions between Farmers' agents and Norris concerning coverage, and (3) Norris relied on the expertise of the agents to their detriment. The court looked to the record of the trial court, finding that Farmers submitted a declaration showing that Norris never even discussed coverage limits, never asked agents about recommending higher or lower limits, and never asked about whether an excess or umbrella coverage was an option. The only communication Norris had with the agents was for adding or removing vehicles from the policy or discussing a claim. Farmers submitted evidence from Norris' deposition testimony, where they acknowledge that they never discussed policy limits and admitted to never asking about the adequacy of coverage.

The court noted that while Norris offered evidence of their long-term relationship with Farmers and their agents, Norris failed to offer any evidence of interactions with the agents regarding the sufficiency of

coverage. In light of the fact that Norris failed to offer evidence about consulting with a Farmers agent on the adequacy of coverage and failed to offer evidence about an agent providing advice on the adequacy of coverage, the court ruled that Norris failed to persuade the court of a special relationship with the agents. Accordingly, the court upheld the trial court's dismissal of Norris' third-party complaint against Norris.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at <https://www.courts.wa.gov/opinions/pdf/762362.PDF>

*Case updates are intended to inform our clients and others about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.*



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