Words Matter: Shielding Against UTPCPL Claims With Subjective Verbiage

PLUS Blog
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The United States District Court for the Western District of Pennsylvania recently examined insurance procurement advertising in the context of an Unfair Trade Practices and Consumer Protection Law claim in *Nelson v. State Farm Fire & Casualty Company*, 665 F.Supp.3d 709 (W.D. Pa. March 28, 2023).

In *Nelson*, which generally asserted coverage related claims against the plaintiff's insurer for denying coverage for property damage loss, the plaintiff asserted that she relied upon her insurance agent's claims that State Farm "would take great care of her" in the event of a claim, and on State Farm's advertising, "like a good neighbor, State Farm is there." To succeed, the plaintiff's UTPCPL claim required a showing of a deceptive act or conduct, justifiable reliance, and actionable harm.

The court concluded that the insurer's slogan was "unactionable puffery" and "any reliance on this slogan on Plaintiff's part is unjustifiable." State Farm's slogan was subjective with respect to what a "good" neighbor would do, rather than "testable facts…or holding oneself out as an 'expert.'"

Further, the court determined that the statement of the insurance agent regarding State Farm's customer service was "far too general and vague to constitute a deceptive statement upon which Plaintiff could justifyably rely." An insurance agent's broad or vague representation is similarly insufficient to support a claim for violation of the UTPCPL.

Advertising is an inherent aspect of any business model, including insurance agencies. However, there is a distinct difference between subjective, broad or vague opinion-based statements, or encouragements of good service, as opposed to terms that could trigger a heightened duty to advise or recommend, and – at worst – give rise to potential liability under a negligence, UTPCPL or fraud claim.

As the *Nelson* court noted, terms like "consultant," "advisor," "advocate" or "expert" can trigger a "special relationship" analysis. *See Yenchi v. AmeriPrise Financial*, 161 A.3d 811 (Pa. 2017); Sadler v. Loomis Co., 776 A.2d 25 (Md. App. 2001). Website assurances can also be fodder for cross examination at deposition or trial, where an insurance agency touts itself as "experts" in a particular field, makes representations that they will meet all of their customers' "insurance needs" such that they are "fully covered," or suggests that it is providing risk management services as opposed to those expected in an ordinary arm's length business relationship. *Wisniski v. Brown & Brown Ins. Co. of Pa.*, 906 A.2d 571 (Pa. Super. 2006).

As defense counsel, it is always important to confirm if a plaintiff/agency customer even reviewed the agency's website or advertising materials, as they surely could not "justifyably rely" on it, if not. Further, relationships between an insurance agency and their policyholder clients may vary from one customer to the next.

While it is important to attract new customers, and touting experience and customer service are ways to do so, insurance agents should be cognizant to keep their assurances general, vague and subjective to avoid the pitfalls of potentially deceptive promises. Marshall Dennehey stands ready to assist with advising on best practice language for promotional materials, and to defend insurance agent E&O claims as needed. ☐

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