

# SHINING A LIGHT ON INSURANCE MARKETING MALPRACTICE

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# Duty of Care vs. Legal Duty and Standard of Care

## ▶ Duty of Care Analysis

- What is the “duty of care” to be applied to the insurance producer or marketer? (Decided by Judge.)
- Was there a breach of the “duty of care”? (Decided by Jury.)
- Did the breach of the “duty of care” cause damage to the client and, if so, in what amount? (Decided by Jury.)

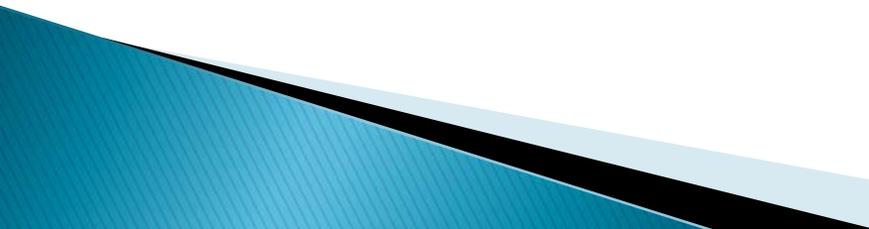
# Legal Duty and Standard of Care Analysis

- ▶ Recognizes that high information insurance producers and marketers interact with almost always low information consumers concerning complex financial service contracts.
  - What legal duty does the insurance producer or marketer owe to the client? (Decided by Judge.)
  - What is the standard of care of the insurance producer or marketer? (Decided by Jury.)
  - Was there a breach of the standard of care? (Decided by Jury.)
  - Did a breach of the standard of care cause damage to the client and, if so, in what amount? (Decided by Jury.)

# Legal Duty of Insurance Marketer

- ▶ In Arizona, a marketer of insurance to consumers (including a licensed insurance producer) owes “a duty of ‘reasonable care, skill and diligence’ in dealing with clients.” *Webb vs. Gittlen*, 217 Ariz. 363, 369, 174 P.3d 275, 279, ¶20 (2008) (quoting *Darner Motor Sales, Inc., vs. Universal Underwriters Insurance Company*, 140 Ariz. 383, 397, 682 P.2d 388, 402 (1984). *Accord, Wilks v. Manobianco*, 237 Ariz. 443, 445, 352 P.3d 912, 914 ¶6 (2015)

# Standard of Care – A Finding of Fact for Jury Aided by Expert Testimony

- ▶ The standard of care for a producer or marketer of insurance is for the insurance producer or marketer to ascertain and understand the needs of his/her/its client (the insurance consumer) and provide that advice which, under similar circumstances, the marketer would provide to him/her/itself. This standard of care requires the marketer to communicate such advice in a manner that is known to actually gain the attention and understanding of the client.
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# Standard of Care

- ▶ The standard of care for producers requires them to be knowledgeable about the insurance contract that is being presented to the client as well as generally being knowledgeable about the types of insurance that are available in the market place (even from competing insurance marketers or companies).
  - ▶ The standards of care must be met not only when insurance is placed but also when the same insurance is renewed or once a year whichever comes first.
  - ▶ Coverage gaps must be brought to the attention and understanding of the client on such occasions – even when, redundant with the advice given on many prior occasions.
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