Summary Judgment Granted:
"A General Request for Insurance Does not Trigger a Duty to Recommend Coverage for Every Scenario"

Rick Brister, Managing Counsel of KSLN's Rochester office, recently won summary judgment in a case where plaintiff brought suit against a carrier for "negligent failure to provide coverage." In this case, the insured purchased a named-peril policy for a home in New York that would not be occupied by the owner, who had moved to Florida. During the winter of 2007, while the house was unoccupied, pipes burst due to freezing weather conditions and the home suffered water intrusion damage. The carrier denied the homeowner's claim because frozen or burst water pipes was not one of the named perils.

The insured claimed that she had asked for, but did not receive "full coverage". The homeowner also claimed that she did not receive a copy of her policy until after the occurrence for which she allegedly purchased "full coverage".

On behalf of the carrier, Rick brought a motion for summary judgment, asserting that, under New York law, absent a specific request to advise and act, an insurance agent does not have a "continuing duty to advise, guide or direct a client to obtain additional coverage" and that a general request for insurance does not trigger a duty to recommend coverage for every possible scenario. Additionally, Rick highlighted well-established precedent that a request for "full coverage" or "the best and most comprehensive coverage available" or "top of the line coverage" are general requests which do not establish a duty to recommend coverage for every possible occurrence.

In answer to the plaintiff's complaint that she did not receive a copy of the policy until after the occurrence, we were able to establish that the homeowner received a copy of the policy timely, and presumably read the policy and did not make any changes. Specifically, Rick showed, through the affidavit of the carrier's fulfillment representative, that the carrier's routine fulfillment policy was followed in the ordinary course of its business, and the policy was timely mailed. In its March 22, 2011 decision, the court highlighted that denial of receipt by the insureds, standing alone, is insufficient to rebut the presumption that the policy was mailed. In addition to a claim of no receipt, there must be a showing that routine office practice was not followed or was so careless that it would be unreasonable to assume that the notice was mailed. In his decision, the judge specifically relied on this proof in the carrier's affidavit. Because the insured was unable to create a fact issue regarding the carrier's proof that it followed a routine fulfillment procedure in the ordinary course of its business, the insured was unable to rebut the carrier's proof that the insured received the policy, and presumably read and understood its terms, including that burst or frozen pipes was not a named peril in the policy.

This case illustrates the need for carriers to go a step further when presented with a claim that the insured did not receive a copy of the policy or did not receive a copy in a timely manner. The affidavit must establish both that the policy was duly addressed and mailed timely and that the routine fulfillment policy was followed in the ordinary course of the carrier's business. Once that proof is made, it will be difficult for the plaintiff to create a fact issue to rebut the presumption that the insured read and understood the policy.