

Negligence Claims Against Insurance Agents Coverage Update

June 2, 2025

Jones v. J. Kim Hatcher Ins. Agencies, Inc.

--- S.E.2d ---, 2025 WL 1479229 (N.C. May 23, 2025)

The North Carolina Supreme Court addressed whether an insured's negligence and punitive damages claims against an insurance agent were sufficient to defeat dismissal under Federal Rule of Civil Procedure 12(b)(6).

In 2016, plaintiff Daniel Jones (Jones) met with defendant J. Kim Hatcher Insurance Agencies, Inc. (Hatcher) to discuss a homeowner's insurance policy for Jones' eight-acre property, which contained a house, farmland and a half-acre pond directly in front of his house. Jones agreed to the coverage limits and premium cost, but Hatcher did not ask Jones any questions regarding his property or the policy application. Hatcher merely instructed Jones to sign a blank single-page application form. Hatcher inspected and photographed Jones' home and property, and then applied for and obtained the policy through Nationwide. A year later, Hatcher recommended that Jones switch to GeoVera Specialty Insurance Company (GeoVera). Jones was prompted to again sign a blank single-page application. After another year, the policy was renewed with GeoVera.

In September 2018, hurricane Florence substantially damaged Jones' home and property. GeoVera initially advised Jones that the losses were covered. However, a month later, GeoVera canceled the policy because the application did not mention the pond or accurately describe the property acreage and, thus, contained material misrepresentations. Jones filed a lawsuit against Hatcher, GeoVera and a surplus lines broker. Against Hatcher, Jones brought tort claims for negligence, gross negligence and punitive damages. Hatcher filed a motion to dismiss all of Jones' claims against it. The trial court granted the motion and dismissed the negligence, gross negligence and punitive damages claims. The North Carolina Court of Appeals affirmed the dismissal of the gross negligence and punitive damages claims, but it reversed the ordinary negligence claim against Hatcher. The appellate court concluded that Hatcher sufficiently alleged a claim for ordinary negligence against Hatcher.

The North Carolina Supreme Court set out to determine whether Jones' complaint disclosed his contributory negligence on its face, sufficient to defeat a claim for ordinary negligence against Hatcher. The Supreme Court explained that dismissal based on contributory negligence is proper only if the complaint demonstrates that Jones' own negligence proximately contributed to his injury "so clearly that no other conclusion can be drawn therefrom." Based on the specific facts in the case, the Supreme Court concluded that the pleadings survived dismissal because one could reasonably expect that,

where an agent stands to earn a commission for performing a service for a customer, the agent can be trusted to perform that service with due care. Requiring customers to double-check their agent's homework, no matter the circumstances as a matter of law, would be inconsistent with reasonable social expectations. The circumstances were not the "rare" case where negligence is so obvious that the court should decide it as a matter of law. Therefore, the Supreme Court affirmed the appellate court's decision.

Because contributory negligence is not a ground to dismiss a gross negligence claim or a demand for punitive damages, the Supreme Court reversed on these issues and held that Jones' claims could not be dismissed at the pleading stage.

By: Joshua LaBar