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## **Client Alert**

### **Indiana Supreme Court Remands Case for Determination of Agent's Responsibility in Underinsurance of Dental Practice**

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The Indiana Supreme Court found that Indiana Restorative Dentistry, P.C. (IRD), represented by Plews Shadley Racher & Braun LLP (PSRB), has actionable negligence and breach of contract claims against its insurance agent, the Laven Insurance Agency, Inc. (Laven) for failure to procure adequate insurance. The court also summarily affirmed the Indiana Court of Appeals' determination that IRD may pursue its insurer, ProAssurance Indemnity Company, Inc. (ProAssurance), under a theory of vicarious liability for Laven's alleged failures. The Supreme Court's ruling reversed much of a Marion Superior Court decision that had granted summary judgment in favor of ProAssurance and substantially limited the scope of IRD's potential recovery.

IRD purchased all the insurance coverage for its family-owned dental practice through Laven for more than thirty years. Through an annual renewal process, IRD requested subsequent increases to its office contents policy that totaled nearly \$200,000. On October 25, 2009, a fire broke out that destroyed much of the dental office. It was only after the fire that IRD learned Laven had failed to make any of its requested increases and IRD had only \$204,000 in office contents coverage. In total, IRD suffered more than \$700,000 in damages to its office contents and faced a drastic coverage shortfall.

The Supreme Court held that IRD had an actionable breach of contract claim against Laven for Laven's failure to increase its office contents coverage to \$350,000 following IRD's request. Laven claimed its liability should be decided only under tort theories similar to other types of professional malpractice. The Supreme Court rejected Laven's argument finding that insurance agents are fundamentally different from doctors, attorneys, and accountants because they



are intermediaries who act on behalf of insurers to facilitate the purchase of insurance. The court followed decades of Indiana precedent and recognized principles of insurance law in confirming that Laven could be held responsible under both contractual and tort theories for its failure to procure the requested insurance.

The Supreme Court also held IRD could pursue its claim that Laven had a duty to advise IRD arising from the parties' long-term special relationship. The Supreme Court found that Laven's use of annual questionnaires to obtain information to revise IRD's insurance, the policy's coverage of highly specialized prosthodontist equipment, Laven's claims of endorsement by the Indiana Dental Association, and Laven's use of newsletters advertising its ability to give expertise tailored to IRD's needs created reasonable inferences that Laven had a special relationship with IRD. On this basis, the trial court's summary judgment grant was reversed and the case remanded for the determination of IRD's claims for breach of contract and negligence against IRD and vicarious liability against ProAssurance.

George M. Plews and Todd G. Relue represented IRD in this case. If you have questions about this or any other insurance coverage issues, please feel free to contact [George](#) or [Todd](#).