COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Carriere-de-Davide v. Westland Insurance Group Ltd.,* 2025 BCCA 283

Date: 20250812
Docket: CA49948

Between:

Mark Carriere-de-Davide

Appellant
(Plaintiff)

And

Jane Doe and Westland Insurance Group Ltd.

Respondents
(Defendants)

Before: The Honourable Mr. Justice Grauer
The Honourable Justice Fleming
The Honourable Justice MacNaughton

On appeal from: An order of the Supreme Court of British Columbia, dated April 25, 2024 (*Carriere-de-Davide v Westland Insurance Group Ltd.*, 2024 BCSC 686, Vancouver Docket S186638).

Counsel for the Appellant:	G. Cameron
Counsel for the Respondents:	M.M. Skorah, K.C. A.D. Gubeli
Place and Date of Hearing:	Vancouver, British Columbia May 5, 2025
Place and Date of Judgment:	Vancouver, British Columbia August 12, 2025

Written Reasons by:
The Honourable Mr. Justice Grauer

Concurred in by:
The Honourable Justice Fleming
The Honourable Justice MacNaughton

Summary:

The appellant, Mr. Carriere-de-Davide, was seriously injured as the passenger in an accident caused by a driver with limited insurance coverage. As a result, the primary source of compensation for Mr. Carriere-de-Davide's injuries was underinsured motorist protection ("UMP") under his Autoplan policy, which was insufficient. He claimed the respondent, Westland Insurance Group Ltd., was negligent in failing to properly advise and counsel him about excess UMP coverage, and had it done so, he would have purchased an additional $1 million in coverage for just $25 more. The trial judge dismissed his claim, finding that he had failed to establish that the respondent breached its duty of care or that it had caused the appellant's losses in fact or in law.

On appeal, Mr. Carriere-de-Davide argues that the judge erred by misstating and misapplying the legal test governing the standard of care for an insurance broker, and failed to consider relevant facts he had found when applying the modified objective/subjective test governing the causation analysis.

Held: appeal dismissed.

This case concerns the content of the duty on insurance agents to provide counsel and advice and depends on the particular facts found by the judge. It is therefore a question of mixed law and fact and warrants appellate deference. The judge correctly identified and applied the legal test, finding in the circumstances that the agent was required to offer and explain excess UMP coverage, but was not required to recommend its purchase. On the facts the judge found, which are not challenged, it was open to him to conclude that the agent met the standard of care and no reversible error has been shown.

Accordingly, it is unnecessary to consider either the issue of causation or assessment of damages.

Reasons for Judgment of the Honourable Mr. Justice Grauer:

1. INTRODUCTION

[1] The appellant, Mark Carriere-de-Davide, was very seriously injured in a car accident that occurred on July 9, 2016, on the Sea-to-Sky Highway, south of Squamish. He was a passenger. The driver was considered at fault. That driver had only basic third-party liability coverage of $200,000. This had to cover claims in relation to the other vehicle as well as the appellant's claim. Consequently, the most significant source for the appellant's recovery of damages was the underinsured motorist protection ("UMP") coverage under his own Autoplan policy. Unfortunately,

it was nowhere near enough. He attributes this to negligence on the part of his insurance broker, Westland Insurance Group Ltd. (“Westland”).

[2] The UMP coverage available to the appellant was the base amount of $1 million that was automatically included in his policy. An additional $1 million in excess coverage was available for a premium of $25. The appellant had never opted for this excess coverage in prior years, but says that, on this occasion, if he had been properly counselled about the benefits and costs of this excess UMP coverage and had understood that he could get an extra $1 million in coverage for just $25, he would certainly have bought it. That he didn’t, he asserts, demonstrates that it must not have been offered and sufficiently explained to him, indicating negligence on the part of the agent.

[3] At trial, the appellant claimed damages in the amount of $1 million, reflecting the amount of additional compensation he says he would have received from the Insurance Corporation of British Columbia (“ICBC”) had he purchased the excess UMP coverage.

[4] In reasons for judgment indexed at 2024 BCSC 686, Mr. Justice Brongers dismissed the claim, finding that the appellant had failed to establish, first, that Westland breached its duty of care, and second (and in any event), that it caused the appellant’s losses in fact or in law.

[5] In case of any mistake in his liability determination, Brongers J. went on to quantify what personal injury damages award the appellant would have been entitled to receive. He assessed the total at $2,217,500. As this exceeded $2 million, the judge concluded that the appellant would be entitled to an award of $1 million had Westland been found liable.

2. ISSUES

[6] The appellant submits that the judge erred in two respects:

1. by misstating and misapplying the legal test governing the standard of care for an insurance broker; and

2. by failing to consider relevant facts he had found when applying the modified objective/subjective test governing the causation analysis.

[7] For the reasons that follow, I agree with the judge's application of the legal test governing the standard of care for an insurance broker, and would therefore dismiss the appeal. It will accordingly not be necessary to consider either the issue of causation or his assessment of damages.

3. DID THE JUDGE MISAPPLY THE STANDARD OF CARE TEST FOR AN INSURANCE BROKER?

3.1 Overview and standard of review

[8] This issue turns on what is encompassed by what both sides acknowledge is the duty of care of private insurance agents and brokers as outlined by the Supreme Court of Canada in *Fletcher v Manitoba Public Insurance Co.,* [1990] 3 S.C.R. 191 at 217, 1990 CanLII 59:

> In my view, it is entirely appropriate to hold private insurance agents and brokers to a stringent duty to provide both information and advice to their customers. They are, after all, licensed professionals who specialize in helping clients with risk assessment and in tailoring insurance policies to fit the particular needs of their customers. Their service is highly personalized, concentrating on the specific circumstances of each client. Subtle differences in the forms of coverage available are frequently difficult for the average person to understand. Agents and brokers are trained to understand these differences and to provide individualized insurance advice. It is both reasonable and appropriate to impose upon them a duty not only to convey information but also to provide counsel and advice.
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> [Emphasis added.]

[9] What did Westland's agent tell the appellant about the excess UMP coverage?

[10] Neither the appellant nor the agent who dealt with him (Ms. Ouellette) could specifically recall what took place when they met to effect the policy in question. The judge summarized their evidence as follows:

> [81] Mr. Carriere de Davide effectively testified that Excess UMP was not offered and explained to him by Ms. Ouellette. He said that he knew this to be the case since otherwise he would have paid the $25 premium and purchased Excess UMP. Mr. Carriere de Davide further testified that, prior to the Accident, he did not understand the concept of UMP coverage. He also did not understand the distinction between third-party liability coverage (insurance that provides compensation to others when the insured is liable for their damages) and first-party insurance (coverage that provides compensation for an insured's own direct losses). In addition, Mr. Carriere de Davide said he believed that since he had previously raised his third-party liability coverage limit to $2 million (from the basic $200,000 coverage), he was covered "for everything". He also stated several times that "my priority is me", suggesting that his primary insurance concern was to protect himself from losses as opposed to ensuring that adequate compensation is available for losses experienced by others.
>
> [82] On the other hand, Ms. Ouellette effectively testified that she did offer and explain Excess UMP to Mr. Carriere de Davide. She said that she knew this to be the case since she had a routine standard practice that she followed when serving Westland's Autoplan customers. It was guided by Westland's computer system that Ms. Ouellette used to input client information while effecting transactions. Once the system specifically prompted her to discuss Excess UMP, she would show the client their driver's licence (which she would have asked the client to physically hand to her at the start of the transaction) and advise them that with their licence they were automatically covered for $1 million in the event they were hit walking, driving, or biking, and the person who hit them was uninsured or underinsured. She would then ask the client if they wanted to increase this coverage to $2 million, for $25 a year. If the client had questions about that, she would answer them. Once the client had chosen whether to accept or decline Excess UMP, she would key into the computer system either "Y" (yes) or "N" (no), as appropriate.
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> [Emphasis added.]

[11] After next reviewing the documentary evidence, the judge made his findings, preferring the agent's evidence over that of the appellant:

> [89] On a balance of probabilities, I prefer and accept Ms. Ouellette's evidence regarding the events of May 19, 2016 at the Westland Whistler office, and I reject the contradictory evidence provided by Mr. Carriere de Davide.
>
> [90] Specifically, I find that Ms. Ouellette's standard practice of explaining Excess UMP was followed on that date. This means that she took Mr. Carriere de Davide's driver's licence as a visual aid, and pointed out that, as a licence holder, he automatically had Basic UMP coverage of $1 million, but also could elect to purchase Excess UMP coverage of $2 million for a cost of $25 more. Mr. Carriere de Davide declined this option, following which Ms. Ouellette keyed "N" (no) into Westland's computer system. Mr. Carriere de Davide later confirmed his choice to decline this optional coverage when he

> wrote his initials next to the words "No Excess UMP purchased on this Transaction" on the insurance contract. I do not find that Mr. Carriere de Davide asked Ms. Ouellette any questions about Excess UMP, or that she elaborated upon her standard explanation of UMP coverage that she habitually gave to clients. I also do not find that Ms. Ouellette made any particular recommendation regarding whether Mr. Carriere de Davide should buy Excess UMP or continue with his Basic UMP coverage.
> …
> [100] In brief, I find that, on May 19, 2016, Ms. Ouellette did offer and provide an explanation of Excess UMP to Mr. Carriere de Davide. It involved a comparison of: (1) his existing $1 million Basic UMP coverage which by default he would continue to have at no additional cost; and (2) the $2 million Excess UMP coverage he could buy for an extra $25. Mr. Carriere de Davide then chose to decline the optional Excess UMP coverage, which resulted in him being covered under Basic UMP instead.
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> [Emphasis added.]

[12] Recall that on the appellant's own evidence, had the agent offered and explained excess UMP coverage to him and told him that he could buy it for an extra $25, he would unquestionably have bought it. Yet this is exactly what the judge found the agent did—a finding that is neither challenged nor open to challenge on this appeal. The judge concluded that, in this case, "the applicable standard of care required Westland's agent to offer [the appellant] Excess UMP, and to explain its benefits and costs, but did not require the agent to recommend that it be purchased" (at para 6; emphasis added).

[13] This, in the appellant's submission, lays bare the error: the "stringent duty" to "provide counsel and advice" articulated by the Supreme Court of Canada in *Fletcher*, he submits, did require the agent to recommend the purchase of the excess UMP coverage in the circumstances of this case.

[14] The appellant argues that this raises a question of law to be determined on a correctness standard because it concerns the misapplication of a legal test to undisputed facts—see *Housen v Nikolaisen*, 2002 SCC 33:

> 36 … Where, for instance, an error with respect to a finding of negligence can be attributed to the application of an incorrect standard, a failure to consider a required element of a legal test, or similar error in principle, such an error can be characterized as an error of law, subject to a standard of correctness.

[15] In submitting that failing to apply the correct legal test raises a question of law, the appellant also relies on *Ding v Canam Super Vacation Inc*, 2024 BCCA 102 at paras 37–38, where this Court affirmed that altering or misapplying a legal test, even if correctly stated, is an error of law. In the particular circumstances of this case, I disagree that *Ding* applies. Unlike *Ding*, we are not here dealing with a judge allegedly altering the test by failing to consider a necessary factor. The question here concerns the content of the "stringent duty to provide counsel and advice". As Justice Fleming, then of the British Columbia Supreme Court, put it in *Schellenberg v Wawanesa Mutual Insurance Company,* 2019 BCSC 196 at para 118, aff'd 2020 BCCA 22:

> … the content of the standard of care for an ordinary reasonable and prudent insurance broker cannot simply be imported from other decisions. The requisite standard of care or the measure of what is reasonable will always depend on the particular facts.

[16] The Court in *Housen* identified the problem:

> 36 … Appellate courts must be cautious, however, in finding that a trial judge erred in law in his or her determination of negligence, as it is often difficult to extricate the legal questions from the factual. It is for this reason that these matters are referred to as questions of "mixed law and fact". Where the legal principle is not readily extractable, then the matter is one of "mixed law and fact" and is subject to a more stringent standard. The general rule … is that, where the issue on appeal involves the trial judge's interpretation of the evidence as a whole, it should not be overturned absent palpable and overriding error.
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> [Internal citation omitted.]

[17] Here, the judge made no mistake as to the applicable test. The alleged error concerns the content he gave to that test based on all of the evidence before him—a classic question of mixed law and fact. As I will expand on below, this process was a factually nuanced one. It consisted of determining what, in the particular circumstances of this case, the duty to provide counsel and advice comprised. How far did it go? The answer must necessarily depend on the facts.

[18] Here, the judge properly identified the legal contours of the standard of care. He then gave those contours content in accordance with the particular facts he found. I am satisfied that, in reviewing how he did so, the applicable standard of review is deferential.

3.2 The legal test

[19] To demonstrate the importance of context to the application of the legal test to the facts of the individual case, I propose to review the principal authorities discussed by counsel before us.

3.2.1 Fletcher

[20] I begin with *Fletcher*. It, too, involved claimants injured in an automobile accident whose claims exceeded the insurance coverage available. But they did not have any "underinsured motorist coverage"—the equivalent to the UMP the appellant did have in our case—and were unaware of its availability. The question was whether and to what extent the provincial public insurer, Manitoba Public Insurance Company ("MPIC"), was duty-bound to inform the claimants about all the types of coverage that were available to them.

[21] In the relevant portion of the judgment, the Court began by considering the duty of care applicable to private insurance agents and brokers, as discussed by the Ontario Court of Appeal in *Fine's Flowers Ltd et al v General Accident Assurance Co. of Canada et al* (1977), 17 O.R. (2d) 529, 1977 CanLII 1182 (O.N.C.A.). It was in that context, concerning private insurance agents and brokers, that the Court set out the duty quoted above at para 8, "… not only to convey information but also to provide counsel and advice".

[22] MPIC was not, however, a private agent or broker; it was a public insurer. It followed, in the Court's view, that its duty was less onerous, due to the institutional setting in which public insurance is sold, and because the service provided by employees is more sales and clerical than professional as they are not licensed agents. Nevertheless, the Court observed at 217–218:

> Given that automobile accidents often produce tragic consequences that may be irreversible and virtually incapable of compensation in monetary terms, customers must have all the information they need in order to make an informed choice about the level of coverage appropriate for them. Where an additional optional form of coverage such as UMC is offered precisely because it is foreseeable to the insurer that there may be instances where the standard coverage is inadequate, it is right and proper that the insurer be under a duty to make the existence of such optional coverage known to the customer.

3.2.2 Sjodin

[23] In concluding that MPIC had failed to fulfil this duty, the Court in *Fletcher* contrasted what MPIC had done (and failed to do) with what had come under scrutiny in *Sjodin v Insurance Corporation of British Columbia et al*, [1986] B.C.J. No. 1423, 1986 CanLII 7793 (S.C.). There, too, the claimant suffered damages that far exceeded the available coverage, and claimed that the defendant was negligent in failing to advise them of the availability of UMP coverage and its importance when he obtained insurance. Mr. Justice McKay dismissed the claim, finding that the agent had asked the claimant if he wanted the extra coverage, and that the claimant declined (as in our case). This was considered sufficient fulfilment of the duty in the circumstances (at 8):

> It is to be kept in mind that when [the agent] dealt with the plaintiff … the UMP coverage had been in existence for nearly 3 years. There had been extensive advertising as to the availability of such coverage and the coverage was explained in brochures which accompanied the renewal forms. The availability of the coverage was clearly set out on the renewal forms. Automobile insurance is something that is familiar, in general terms at least, to all who operate motor vehicles. Surely an agent who offers the coverage and receives an unequivocal "no" is entitled to assume that the customer knows what he is refusing and has his own reasons for that refusal. If a customer says he is satisfied with $500,000 third party liability then surely an agent is not duty bound to try and have the coverage increased. If a customer says that he does not want collision and comprehensive coverage then surely an agent is not duty bound to try and have him change his mind. The agent would, as I have said, be entitled to assume that the customer has his own reasons for making the decision that he has. … What we have here is the annual renewal of motor vehicle insurance coverage — a rather straightforward proposition which is well understood by those who operate motor vehicles. The customer is asked as to the coverage he wants. He is free to inquire about anything he does not understand. There is, in my view, no *duty* on the part of the agent to go further. If a coverage is offered and unequivocally declined then the agent need go no further.

> [Emphasis added, italics in original.]

[24] The Court in *Fletcher* referred specifically to this part of the judgment to contrast the context with that in which MPIC had failed to offer UMC coverage. In doing so, it did not voice any concern with what McKay J. stated.

[25] I turned next to *Fine's Flowers*, which McKay J. distinguished in *Sjodin*.

3.2.3 Fine's Flowers

[26] Unlike *Fletcher* and *Sjodin*, *Fine's Flowers* was not an automobile insurance case. Mr. Fine owned Fine's Flowers, an extensive horticultural business. He relied on the defendant agent to secure coverage for his business, asking the agent to obtain "full coverage". The policy the agent obtained covered a number of business risks, but not the one that occurred: damage to plants by freezing caused by failure of a water pump. In the Court of Appeal for Ontario, the majority held that the undertaking to secure "full coverage" amounted to a contractual undertaking to keep the plaintiff covered for all foreseeable insurable and normal risks to the property used for the business, and, having not done so, the agent was liable. Liability was also sustained on the basis that the agent failed in its duty to inform the plaintiff of the gap in coverage.

[27] Contextually, the majority noted the importance of the trial judge's finding that Mr. Fine was honest and credible, and, although astute and successful in business, was not particularly well-informed about insurance. He had a long continuing relationship with the agent, and instructed that he wanted "everything covered", leaving it to the agent to effect this. The agent failed to do so.

[28] The majority observed the following at 538–539:

> In many instances, an insurance agent will be asked to obtain a specific type of coverage and his duty in those circumstances will be to use a reasonable degree of skill and care in doing so or, if he is unable to do so, "to inform the principal promptly in order to prevent him from suffering loss through relying upon the successful completion of the transaction by the agent": Ivamy, General Principles of Insurance Law, 2nd ed. (1970), at p. 464.

> But there are other cases, and in my view this is one of them, in which the client gives no such specific instructions but rather relies upon his agent to see that he is protected and, if the agent agrees to do business with him on those terms, then he cannot afterwards, when an uninsured loss arises, shrug off the responsibility he has assumed. If this requires him to inform himself about his client's business in order to assess the foreseeable risks and insure his client against them, then this he must do.
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> …
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> I do not think this is too high a standard to impose upon an agent who knows that his client is relying upon him to see that he is protected against all foreseeable, insurable risks.
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> The loss of the greenhouse plants through a breakdown in the supply of heat and steam to the greenhouses in winter must be a very predictable type of loss for a business of this kind.

[29] It is evident that, in this business context, the insured's clear reliance on the agent to make sure he was fully covered was crucial. In *Sjodin*, in the auto insurance context, McKay J. found *Fine's Flowers* distinguishable because, unlike the insured in that case, the claimant in *Sjodin* "did not put himself in the hands of [the agent]. He did not, in effect, say: 'Give me that coverage which, in your expert opinion, I should have to adequately protect me from all reasonably foreseeable risks'. … He was offered all available coverage and chose that which he wanted and rejected that which he did not want" (at para 18).

3.2.4 Miller v Guardian Insurance

[30] Like *Fletcher*, in *Miller v Guardian Insurance Co of Canada*, 127 D.L.R. (4th) 717, 1995 CanLII 9177 (A.B.K.B.), the injured plaintiff was unable to recover the full extent of his loss because his Guardian policy did not include an endorsement for underinsured motorist protection of any amount. At trial, the judge had no difficulty in finding the agent liable for failing to introduce him to UMP coverage, and to explain it to him in circumstances where he was a first-time buyer of automobile insurance, insuring a motorcycle with its inherent risks. It was noteworthy that the plaintiff had previously had such coverage included automatically on the policy he had for his truck that had been insured by his father, but the plaintiff was now insuring a different vehicle, and doing so on his own. He was unaware of the nature of UMP, which was no longer included. The judge was satisfied that if he had been aware of

the importance of UMP and its minimal cost, he would have taken the coverage (at para 32). The judge did not accept the agent's evidence as to her business practice as evidence that the coverage had been offered and declined.

3.2.5 Beck v Johnston, Meier Insurance Agencies Ltd.

[31] Reported at 2010 BCSC 719 (Chambers), this judgment concerned a claim under homeowners' insurance that arose under tragic circumstances. The claimant was the estate of Karen Beck. It involved the loss of the house she owned with her estranged husband, Richard Beck, in which he had been residing alone since she moved out. Mr. Beck murdered Mrs. Beck, and then burned down the house before committing suicide. Her estate's claim for the loss of the house was denied because the policy excluded coverage for the consequences of an intentional act of an insured. The estate then sued the insurance agent for negligence. The agent had renewed coverage on the house for Mrs. Beck for a number of years.

[32] Justice Griffin, then of the British Columbia Supreme Court, found the agent liable, citing *Fletcher* and *Fine's Flowers*. On the facts, she found the agent knew or ought to have known that Mrs. Beck was not living in the home and was estranged from her husband, yet never raised the consequences of that state of affairs. Justice Griffin considered that the agent failed in its duty because it failed to make proper inquiries to ascertain Mrs. Beck's home insurance needs given the change in her living arrangements, and never pointed out the potential for gap in coverage.

3.2.6 Corrigan v Crain & Schooley Insurance Brokers Ltd.

[33] In this decision, indexed at 2015 ONSC 3721, the plaintiff insured suffered a loss when his tarp barn, used for storing hay, collapsed in the winter under the weight of snow. The defendant insurance broker had placed insurance on the farm.

[34] The plaintiff had contacted the defendant to have the tarp barn insured after he erected it. It was added to the existing policy as an outbuilding to be insured for named perils. The insured was unaware that the policy provided coverage for named perils only, which did not include collapse due to snow load.

[35] In finding for the plaintiff, the judge said this:

> [20] I am satisfied that the Defendant breached its duty to advise the Plaintiff. As stated in *Fletcher*, supra, private insurance brokers are more than just mere salespeople. There is no evidence before me to establish that any analysis was done with respect to [the plaintiff's] request for insurance, that any advice was provided to [the plaintiff] on the insurance he was being provided, or that any advice was provided to him on foreseeable risks that could not be insured. On the contrary, the evidence of [the plaintiff] is that none of these things happened. I accept his evidence in that regard.

3.2.7 Regehr v Co-Operators General Insurance Company

[36] This decision, indexed at 1998 ABQB 428, deals with circumstances very similar to this case, where the problem was a lack of UMP coverage.

[37] Having recently moved to Alberta from Saskatchewan, the plaintiff walked into an office of the defendant to insure his vehicle. He told the agent that he wanted a quote on "automobile insurance for himself, for his vehicle, for others, and for glass". He got all of that. He did not get UMP coverage. He alleged that the agent was negligent in failing to provide it to him, in failing to tell him that such coverage was available, and in failing to explain the coverage to him properly.

[38] As in our case, the plaintiff's evidence of what occurred at the time he purchased the insurance differed from that of the agent, and the judge accepted the evidence of the agent. The judge found that the agent asked the plaintiff if he wanted the UMP coverage endorsement, told him what the endorsement meant "in a nutshell", and when he said he did not think he needed it, she gave him examples of driving in Québec or outside the country where other motorists might have insufficient liability coverage. He declined it. The judge found that the plaintiff did not ask for the agent's advice, or ask for "full coverage". The judge concluded as follows:

> [25] The explanation that [the agent] gave to [the plaintiff] was not perfect, but it was reasonable. She explained the elements of the protection to him. She gave him examples of situations in which the protection would come into play. She was not required to tell [the plaintiff] about every fact situation in which the coverage would be helpful. She essentially did tell him that there were a lot of uninsured and under insured drivers on the road so that he was always at risk. [The plaintiff] appeared to understand the explanation given and said that he did not want the coverage and did not see himself in a situation where he might need the coverage. Because of the explanations

> that had been given to him, [the agent] was entitled to conclude that [the plaintiff] was exercising his prerogative to refuse elective coverage. She was not obliged to wrestle him to the ground on this issue.

[39] The judge went on to find that, to the extent advice was required, sufficient advice had been given. It should be noted that, unlike our case, the plaintiff had never had UMP coverage before.

3.2.8 Mann v BCAA

[40] This decision, indexed at 2004 BCSC 139, also involved UMP coverage. Referring to *Fletcher*, Mr. Justice Drost described the parameters of the standard of care as follows:

> [71] It is the duty of a public insurer to provide all the information a customer needs concerning the available range of coverage (including such things as UMP) so that the customer may make an informed choice about the level of coverage he or she needs ...

[41] There, the plaintiff complained that the agent had mistakenly told her that the $2 million third-party liability coverage she purchased included UMP coverage to that same limit of $2 million. In fact, her UMP coverage had a limit of $1 million as it did in her previous policy. The judge did not accept that evidence, finding that the agent accurately explained the extent of basic UMP coverage and offered the plaintiff the opportunity to purchase an additional $1 million in UMP coverage for $15. He dismissed her claim.

3.3 Discussion

[42] Justice Brongers began his discussion of the applicable standard of care as follows:

> [76] Based on *Fletcher* and the jurisprudence cited therein, I understand that the general contours of an insurance broker's duty of care to customers are as follows:

a) the insurance broker has a stringent duty to provide the customer with information, counsel, and advice about available insurance coverage to meet the customer's needs;

b) where the customer adequately describes their situation, the onus is on the insurance broker to review the customer's insurance needs and provide the full coverage requested; and

c) should an uninsured loss nevertheless occur, the insurance broker will be liable unless it points out the gaps in coverage to the customer and provides advice on how to protect against those gaps.

[43] The judge then proceeded to determine the specific standard of care applicable in this case:

> [110] … In doing so, I note that, as in *Sjodin, Regehr,* and *Mann,* this is a case involving the purchase of automobile insurance by a plaintiff who had done so previously. To paraphrase Justice McKay's remarks in *Sjodin,* this is a type of transaction that is generally familiar to all car owners in British Columbia since they must typically deal with an Autoplan insurance broker at least once per year to renew their coverage. It is not an especially complicated or specialized transaction, and can be readily understood by most customers.
>
> [111] As such, I find that an Autoplan insurance broker has a stringent duty to provide customers with information, counsel, and advice about all available insurance coverage to meet the customer's needs, including UMP. So long as the customer adequately describes their situation, the broker must review the customer's insurance needs and provide the full coverage requested by the customer. However, that duty does not extend to go further and encourage customers to purchase Excess UMP. This is particularly the case for customers who have a history of declining Excess UMP in the past, who do not make any specific inquiries in response to the agent's explanation of Excess UMP, and who give no sign of a failure to understand the concept of UMP.
>
> [Emphasis added.]

[44] It is in the emphasized portion that the appellant submits the judge fell into error. Did the law require the agent here to go further and encourage the appellant to purchase excess UMP by recommending it, as the appellant argues?

[45] In my view, it was open to the judge to conclude that it did not. As noted, the question is highly dependent on the factual context.

[46] Among the cases reviewed above, for instance, it made a difference whether the insured was familiar with UMP coverage. Thus in *Fletcher*, involving a provincial public insurer and an insured who was unfamiliar with underinsured motorist coverage, the Court found the duty less onerous than that of a private insurer, but still required the agent to inform the motorist of the availability of UMP coverage. In *Sjodin* and *Mann*, which involved public automobile insurance sold through a private agency, the duty discussed was slightly more onerous. It went beyond merely advising of the availability of UMP coverage to discussing the availability of excess coverage and its cost, making sure the insured was aware of the options. *Miller* and *Regehr* were similar, although the insureds had not previously had UMP coverage. There, the duty was set higher still, to explain not only the availability of excess coverage, but also how it would operate and how it would be helpful. In none of those cases was the duty taken so far as to require the agent to recommend that the insured purchase the coverage in the way the appellant would have it.

[47] The appellant instead relies on those cases discussed above that required more extensive advice and warning, such as *Fine's Flowers, Beck,* and *Corrigan*. But none of those cases involved automobile insurance, which is more limited in scope and with which people are generally more familiar (subject to it being demonstrated otherwise on the particular facts). Instead, those cases involved general property insurance or business insurance requiring more focused advice arising from the insured's expressed insurance needs, including the extent of existing and available coverage and any gaps therein.

[48] In reviewing the context before him, Brongers J. made the following findings:

a) the appellant was a long-standing customer of Westland's office "who had been offered and declined Excess UMP on multiple occasions" and who "did not indicate either a particular interest in or a lack of understanding of this type of optional coverage" (at para 116);

b) Westland's agent provided the UMP coverage actually requested by the appellant after she had conducted her standard review of his insurance wants and needs (at para 117);

c) to the extent that having $1 million worth of basic UMP rather than $2 million worth of excess UMP can be considered a "gap" in coverage, the agent identified it for the appellant and explained that it could be addressed by paying an extra premium of $25 (at para 118), explaining further the relative benefits and costs of paying the additional $25 to obtain the excess coverage (at para 116);

d) having been advised of the nature of UMP coverage and the availability of an additional $1 million in coverage for an additional $25, the appellant chose to decline it (at para 100; see also paras 82, 89–90).

[49] In short, the judge found that, notwithstanding that the appellant had declined excess UMP coverage on previous renewals, the agent explained the nature of UMP coverage to him with reference to his driver's license and the kinds of uninsured/underinsured problems that could arise, and further offered the excess coverage for $25. In this context, the judge concluded that the defendant had met its obligation to provide appropriate information, counsel, and advice about the available insurance coverage to meet the appellant's needs. It was not incumbent upon the agent, in the judge's view, to actively recommend that the appellant buy the excess coverage, given that he was a repeat customer whose personal factors were not new, and who had neither raised specific concerns nor expressed particular needs (at para 119).

[50] That the duty was satisfied is in accord with the appellant's own retrospective evidence: that the agent could not have explained to him the availability of the excess coverage of an additional $1 million for a mere $25, because if she had, he would certainly have bought it. In short, he required no further counselling and advice. But the judge found that she did so advise him—yet he did not

accept the offer. The appellant has demonstrated no reversible error in the judge's conclusion that the standard of care was met in these circumstances.

4. DISPOSITION

[51] For these reasons, I would dismiss the appeal.

"The Honourable Mr. Justice Grauer"

I AGREE:

"The Honourable Justice Fleming"

I AGREE:

"The Honourable Justice MacNaughton"