

# Insurance Broker Sold You a Worthless Policy? Tough Luck



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Did you know that your insurance broker does not owe you a duty to get you the insurance coverage you need on a project? That's right, according to a recent Court of Appeal case, *San Diego Assemblers, Inc. v. Work Comp for Less Insurance Services, Inc.* (2013) 220 Cal.App.4th 1363, an insurance broker is only obligated to procure the insurance you ask for, not necessarily the insurance you need.

In 2000, prior to beginning work on a restaurant remodel project, San Diego Assemblers contacted its insurance broker, Work Comp for Less (broker) to obtain general liability insurance coverage for the project. Assemblers told the broker the policy limits its client required, but did not describe the types of coverage it wanted. The broker procured policies and provided them to Assemblers. Once Assemblers received the policies it did not ask the broker questions nor did it request different policies or coverage.

In April 2004, Assemblers performed work on the restaurant remodel project and in July 2008, an explosion and resulting fire occurred at the restaurant, causing substantial property damage. Assemblers tendered to its insurance companies - Lincoln General, which provided insurance coverage in 2004, and Preferred Contractors, which provided insurance coverage in 2008 – but both denied coverage. Preferred denied coverage based upon a prior completed work exclusion and Lincoln General denied based upon a manifestation endorsement, which limited coverage to injuries or damages that first manifested during the policy period. Although Assemblers told the broker it needed insurance specifically for the remodel project, the policies the broker sold Assemblers did not actually cover Assemblers' work. In essence, the broker sold Assemblers policies that did not cover Assemblers' work on the project.

In ruling in favor of Work Comp for Less, the California Court of Appeal focused on the fact that Assemblers never requested a specific type of coverage and the broker never misrepresented the type of coverage procured. The court found that the broker did not owe a duty to Assemblers to determine what kind of coverage was needed, but rather was obligated only to procure the insurance requested by Assemblers. Indeed, the court found that:

insurance brokers owe a limited duty to their clients, which is only "to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured." Accordingly, an insurance broker does not breach its duty to clients to procure the requested insurance policy unless "(a) the [broker] misrepresents the nature, extent or scope of the coverage being offered or provided ... (b) there is a request or inquiry by the insured for a particular type or extent of coverage ... or (c) the [broker] assumes an additional duty by either express agreement or by 'holding himself out' as

having expertise in a given Field of insurance being sought by the insured.”

The moral of the story – know what kind of insurance you need; your broker doesn't owe you a duty to find out for you.