PROFESSIONAL LIABILITY UNDERWRITING SOCIETY

MANAGING THE RISKS OF THE INSURANCE BROKER PROFESSION

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DUTIES OF A BROKER AND BROKERAGE

DUTIES IMPOSED ON AN INSURANCE BROKER

- Exercise a reasonable degree of skill and care
- To obtain policies of insurance bargained for
- Advise the insured of gaps in coverage
- To service policies as the circumstances require

DUTIES IMPOSED ON AN INSURANCE BROKERAGE

- All of the above
- Vicarious liability – support staff, brokers, etcetera
- File and document retention

COMMUNICATION: KNOW YOUR CLIENTS

- Listen to your clients
- Understand them, their business, and their needs
- Complete a risk assessment to assist in choosing adequate products and recommend appropriate products

The most prevalent and predominant cause of an E&O claim has typically been failure to provide <u>proper</u> and <u>sufficient</u> coverage.

COMMUNICATION: KNOW YOUR CLIENTS

- Keep your clients informed of:
  - Gaps in coverage
  - Risk associated with specific coverage
  - Important exclusions

- Ensure this is done in a timely manner and memorialize **ALL** such conversations.

DOCUMENT PROCEDURES

Standardize, Enforce, and Audit

- REQUIRE **ALL** COMMUNICATIONS WITH CLIENTS AND INSURERS TO BE DOCUMENTED
- Standardized forms, filing systems, computer systems, checklists, procedures for file management and best practices
- Complete occasional spot audits to ensure compliance with policies

ESTABLISH PRACTICES AND INTERNAL PROTOCOLS

ADVANTAGES OF FORMAL PRACTICES/PROCEDURES

- Consistency
  - Everyone knows what is expected of them

- Adherence
  - Easier to audit/ spot check to ensure proper steps are being taken
- Standardization templates
  - Easy to be adapted as needed for specific files
- Claims reporting and handling processes
  - Ensuring that everyone is on the same page is essential

INSURANCE COMPANY: EXPECTATIONS OF THE BROKER

Insurance Companies rely on broker communications to assist them a fair assessment of the risk and to guide them in the underwriting process. The following are expectations that Insurers anticipate from the Broker:

- **Ensure that submissions are reviewed and complete**, including all pertinent information and loss details, if any.
- **Proper communication from the Broker to the Insurer** of both information that is beneficial to the risk and any communications that may be deterrents to the risk as well.
- **Stipulate what coverage is required for the submission** and whether any other extensions of coverage or customization to the wording may be deemed necessary.
- **If you are granted binding authority** – revert back to and remain within the parameters stipulated in your agreements.

BROKERS BE AWARE – MOST PREVALENT ISSUES

The following are the most prevalent allegations relative to Broker E&O Claims:

- **Failure to Document -** The most frequent cases are more so relative to the failure to document telephone conversations or personal discussions with clients. If a loss occurs your inability to produce any written or automated admissible evidence of conversations will be detrimental. Note that the "proof" is missing.

- **Inadequate Coverage -** Broker did not provide proper coverage, or timely coverage, placed inadequate limits of liability or failed to place appropriate insurance relative to the risk.

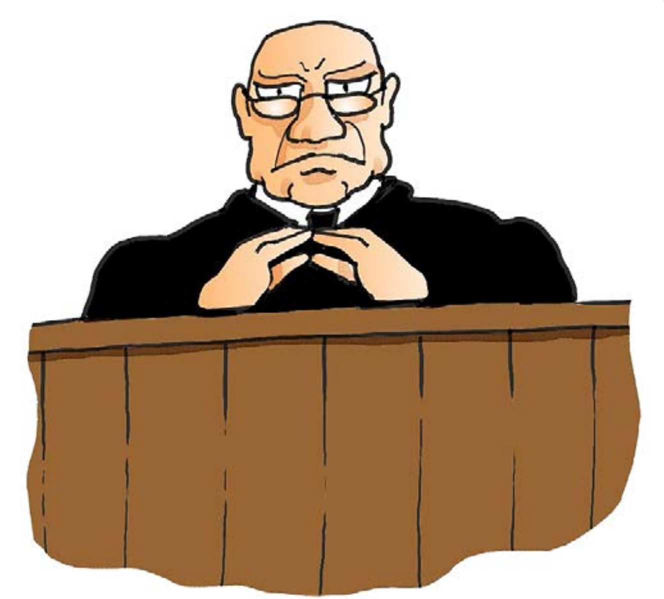
- **Misrepresentation -** Insurers can void a policy if brokers fail to provide relevant information that they are privy to.

- **Proper Due Diligence or Standard of Care -** This basically encompasses all scenarios wherein the Broker fails to exercise , adhere to, perform or deliver an acceptable standard/duty of care that is common practice within their role as an insurance Broker.

TRAINING AND EDUCATION – HOW TO AVOID ISSUES

- Regular Staff Meetings
- Lunch and Learn Sessions
- Confidentiality and Privacy Breach Awareness
- Continuing Education

THE LAW: THE STANDARDS ESTABLISHED BY THE COURTS



Fine's Flowers Ltd. v. General Accident Assurance Co. of Canada

1977 Ontario Court of Appeal decision

FACTS:

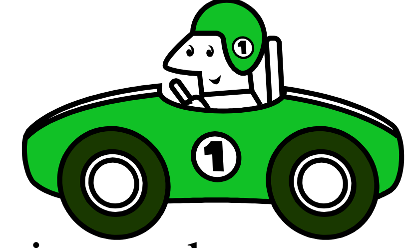
- an Ottawa greenhouse owner asked broker for "full coverage" and "the best coverage"
- Policy did not cover damage to plants caused by frozen water pumps
- Broker did not advise insured of this exclusion
- Pumps froze and plants damaged
- Court found the broker liable for the owner's losses

STANDARD OF A BROKER

1) An insurance agent has a duty to procure insurance consistent with the client's request or to advise the client that he/she cannot obtain it; and

2) Where a client gives no specific instructions but relies on the agent to see that he/she is protected, the agent has a duty to use reasonable care to understand the nature of the client's business, assess the risks which ought to be insured against, and to procure insurance that is appropriate for the client's needs.

Fletcher v. Manitoba Public Insurance Co.



1991 Supreme Court of Canada decision

- Dealt with an automobile policy and lack of underinsured coverage (Family Protection Endorsement)
- Supreme Court of Canada looked at duty of private agent/broker as set out in *Fine's Flowers* and added a duty to provide advice as to the forms of coverage a client requires to meet their needs
- "The onus is on the insurance agent to review the insurance needs of the customer and provide the full coverage requested. Should an uninsured loss occur, the agent will be liable unless he or she has pointed out gaps in coverage to the customer and advised him or her how to protect against those gaps."

Takeaways from *Fine's Flowers* and *Fletcher*

Demonstrate that the broker understands the nature of a customer's insurance needs –by visiting the business, completing a thorough questionnaire, including photographs, etc.

Advise of any gaps in coverage **<u>in writing</u>**!

Understanding A Client's Insurance Needs

Bronfman v. *BFL Canada Risk and Insurance Services Inc.*

- 2013 Ontario decision
- Bronfman family very wealthy with 22,000 sq ft home, cottages, boats, etc.
- Bronfman insurance policy had limits of $10,000 for jewelry and $1,500 for cash
- Contents of a safe were stolen including $2 million of cash and jewelry
- Court found broker should have known Bronfmans would have significant amounts of cash and jewelry in their home
- Broker was negligent for not reviewing the Bronfmans' needs sufficiently

Failure to Advise of Gaps - Vacancy

Cheecham v. Meadow- North Agencies Ltd.

- 2012 Saskatchewan Court of Appeal decision
- Cheecham owned a rental property
- The broker obtained a policy that was renewed for several years
- The last two renewals prior to the loss were sent out with a cover letter indicating "if the house ever goes unoccupied or vacant, please let us know"
- Cheecham admitted that he never read his policy and never asked questions about it
- Under the policy, there was no coverage for vandalism if the building was vacant. Insurer denied Cheecham's claim for a vandalism loss when the building was vacant for two days
- Trial judge found the broker liable for failing to review the vacancy exclusions with Cheecham
- Court of Appeal upheld the judge's findings

Failure to Advise of Gaps – Vacancy

Cheecham continued

- Court of Appeal found that the broker knew the house was a rental property and knew it was likely to be vacant from time to time
- As part of its duty to provide counsel and advice, the broker should have drawn Cheecham's attention to the fact that there would be no coverage for vandalism once the property became vacant. The vandalism exclusion for vacant property could be considered a gap in coverage
- Vacancies were not speculative or a mere possibility – they were part and parcel of the rental property business

Newbigging v. M. Butler Insurance Brokers Ltd.

- 2012 Ont. S.C.J. decision, appeal of a Small Claims Court decision
- Newbigging owned a boarding house for four occupants and a broker arranged insurance for the property which was renewed for a few years
- There was an exclusion for vandalism occurring during vacancy
- The insurer denied Newbigging's claim as a result of water damage from vandalism when the property was vacant
- The broker took the position that it sent renewal letters to Newbigging indicating that coverage was subject to policy exclusions and that Newbigging acknowledged this condition and sent it back to the broker
- Newbigging admitted that he did not read the policy
- The judge found that the broker breached its duty to advise by not specifically advising the client that any time the property was vacant there would be limitations to his coverage
- The Superior Court Judge agreed and found the broker needed to advise of and explain the vacancy exclusion as it was a gap in coverage

Follow-up by Broker

Colangelo Niagara Inc. v *York Fire & Casualty Insurance Co.*

- 2013 Ontario decision
- Customer purchased an expensive excavator that was never listed in a schedule of equipment and was destroyed by fire
- Broker's evidence that customer told him about purchase of equipment and broker requested serial number and invoice
- Broker had notes of conversation and then had notes confirming two follow-up calls for the information
- Broker wrote to customer as well requesting information and advising that there would be no coverage for equipment after 30-day grace period
- Court found the broker acted reasonably and was not negligent or liable for the plaintiff's loss
- Judge said it was important that broker had confirmed conversation in a letter

Nicholson v Colley Borland & Vale Insurance Brokers Ltd.

- 2009 Ontario S.C.J.
- Plaintiff purchased a truck from a car dealer from whom he had purchased several vehicles in the past
- Sales rep had a telephone record to confirm he called the broker and his evidence was that he advised the broker of the new vehicle and stated that he would fax over bill of sale; however, the fax did not go through
- The insurance broker did not follow-up
- The plaintiff was later involved in an accident with the truck, which was never insured
- The court found the broker partially liable, as the broker had an obligation to follow-up with the sales rep in some manner when the promised fax was not received
- The plaintiff was liable for not recognizing that he had not received a pink slip and the sales rep was liable for not properly faxing the bill of sale

Determining Limits

Midas Investment Corp. v. Dominion of Canada

- 2013 Ontario decision
- Plaintiff suffered a loss after commercial building flooded
- Dominion policy limits were insufficient to cover loss
- Emails between customer and broker showed that customer used own judgment in determining value of property to be insured and amount of coverage to be purchased
- Important –broker suggested in an email that they obtain an estimate of value from a professional but customer declined
- Court found that the plaintiff did not rely on the broker for advice as to an appropriate limit but instead provided specific instructions
- Case was dismissed in a summary judgment motion

Maison Jean-Yves Lemay c. Bar et Spectacles Jules et Jim

- 2014 Quebec S.C.
- The client and the broker jointly retained an appraiser to assess the insured property to arrive at an appropriate limit of coverage just prior to renewal
- The appraiser provided a report indicating a value of $565,000 after renewal
- Broker received report but went on vacation shortly thereafter and left limit at $424,000 set at renewal
- While broker away, property was destroyed by fire
- Rebuild and demolition costs were estimated at $1 million
- The court found the broker was liable for obtaining the appraisal late in the process and for not advising the client that the appraisal did not include demolition costs and that such costs would be included in the limit for the building

CONCLUSIONS ON LAW

- Courts are holding brokers to high standards with respect to their duty to assess a client's insurance needs and provide advice with respect to appropriate insurance products to meet those needs
- The case law requires brokers to ask sufficient questions about a risk before recommending insurance and to ask questions again at renewal in a timely manner
- Courts are also requiring brokers to document all conversations and recommendations to establish that their duties have been fulfilled
- Courts will find in favour of brokers where brokers have the documentation to confirm that specific instructions were given by a client and broker followed those instructions or that brokers warned in writing of gaps in coverage
- Courts will also find in favour of brokers when brokers can establish that they made all reasonable attempts to obtain information from a customer and the customer failed to provide it in a timely manner

NOTIFICATION OF E&O CLAIM

Notify your broker of all claims AND circumstances that may reasonably give rise to a claim

Claim Means:

a) any written or oral monetary demand for DAMAGES, or allegations of the same, against any of the ASSUREDS including a demand for mediation, arbitration or any other ADR process; or

b) any civil, criminal, administrative or regulatory proceeding initiated against any of the ASSUREDS, including any appeal there from; and in relation to an actual or alleged WRONGFUL ACT committed by the ASSURED in the rendering of INSURED SERVICES, WRONGFUL EMPLOYMENT PRACTICE, or OUTSIDE BOARD WRONGFUL ACT committed by the ASSURED solely in the capacity of an OUTSIDE BOARD DIRECTOR.

DO NOT MAKE ADMISSIONS

CO-OPERATION OF THE ASSURED

The ASSURED must co-operate with the UNDERWRITERS, including during coverage investigations. At the request of the UNDERWRITERS the ASSURED must assist UNDERWRITERS to effect settlement, forward proceedings, attend hearings and trials, assist in securing and giving evidence and in obtaining the attendance of witnesses. The ASSURED shall not admit to any liability and furthermore shall not, without the UNDERWRITERS written approval and at the ASSURED'S own cost, voluntarily make any payment, assume any obligation or incur any expense.

CLAIM SCENARIOS

CLAIM SCENARIO 1:

Broker Removes Coverage at the Request of the Client

FACTS:

The insured broker was contacted by existing clients (husband and wife) regarding making changes to their coverage. The clients held a Homeowner's insurance policy which covered their primary residence as well as two investment properties.

One of the clients was a cost conscious accountant. He advised the broker that he wished to remove the sewer back-up/water damage coverage. It was the client's rationale that the primary residence was located in a rural area that was serviced by a septic system, therefore, coverage for sewer back-up was unnecessary as they were not connected to a municipal sewer system.

CLAIM SCENARIO 1:

FACTS CONTINUED:

The clients emailed the broker and made a specific request that the sewer back-up/water damage coverage be removed. The broker advised the client that the coverage was once standard but that it was no longer the case, and that it could be removed from coverage upon request.

The Insured acted upon the instructions received and removed the coverage from the Homeowner's Policy. Unfortunately, a back-up of water occurred in the clients' basement of their primary residence several months later. The water back-up was the result of an overflow of their sump pump due to heavy rain.

CLAIM SCENARIO 1:

FACTS CONTINUED:

The clients submitted a claim to their insurer for the water damaged basement. They were informed that no coverage was in place to deal with the loss in light of the removal of same by the Insured, who was acting on instructions.

An action was commenced by the clients against the broker. The clients sought $60,000.00 in damages for the cost to repair the water damaged basement. The clients allege that the broker failed to meet the standard of care by not advising them of the gap in coverage that occurring by removing the endorsement.

Insurer retained defence counsel to defend the broker.

CLAIM SCENARIO 1:

DISCUSSION QUESTIONS:

1) Did the broker meet the standard of care?
2) Do you think the broker is exposed to liability?
3) What could the broker have done to avoid this claim?

CLAIM SCENARIO 1:

OUTCOME:

Commenced pre-litigation settlement discussions with counsel for the clients. According to the broker, when the request was made to remove the coverage in question, no further inquiries were made.

In light of the fact that no information was conveyed to the clients, including the gap in coverage that would result from their instructions to the broker, it was the view of defence counsel that the broker breached the duty of care and fell below the standard expected of an insurance broker in similar circumstances. Contributory negligence on the part of the clients was assessed between 15% and 35%. The clients had claimed $60,000.00 to repair the flooded basement, accepted offer of $40,000.00 to settle.

CLAIM SCENARIO 2:

Broker Arranges CGL Coverage for Client

FACTS:

The insured broker was approached by a new client to arrange coverage. The client was opening a fitness club. The client wished to obtain a basic commercial business policy to satisfy the landlord's requirement under the lease.

From the outset, the client advised that they had their own E&O insurance and that they required all fitness trainers to carry their own E&O insurance. The client was cost conscious about premiums. A CGL policy was set up with the insurer which contained an athletic participant exclusion. The policy would only cover injuries that were the result of faulty fitness equipment.

CLAIM SCENARIO 2:

FACTS CONTINUED:

The insured discussed coverage with the client during yearly renewals and discussed the terms and conditions of the policy. The client would advise that there were no material changes. The insured would make notations regarding the renewal and discussion of the athletic participant exclusion, but did not confirm the content of their discussions with the client in writing.

A client of the fitness club alleges they were injured during a training session with a fitness trainer. The client presented the claim to the insurer and was advised that there was no insurance available to respond to the claim as there was an exclusion for athletic participants training at the centre.

CLAIM SCENARIO 2:

FACTS CONTINUED:

The client commenced a third party action against the insured. The client claimed $2,000,000.00 in damages and sought indemnity for any sums found owing to the plaintiff in the main action.

The client alleged that it relied on the insured broker to ensure that it was protected against all foreseeable risks in the operation of business and to provide it with insurance and indemnification to adequately compensate it for any loss associated with the premises.

Insurer retained defence counsel to defend the broker.

CLAIM SCENARIO 2:

DISCUSSION QUESTIONS:

1) Do you think the broker is exposed to liability?
2) What could the broker have done to avoid this claim?

CLAIM SCENARIO 2:

OUTCOME:

Attended mediation to reach settlement. Although the broker kept detailed notes regarding the renewal discussions and the client declining E&O coverage, the athletic participant exclusion would be a significant exclusion for any fitness facility. Counsel for the client noted that the policy recommended by the client excluded virtually all aspects of the client's primary business and was virtually a worthless policy.

CLAIM SCENARIO 2:

OUTCOME CONTINUED:

Moreover, defence counsel was concerned that even though the insured had notations indicating that the client advised they had their own E&O insurance, it was not clear that E&O insurance for the trainers would have covered all potential claims by participants and there was nothing in writing to the client confirming that they did not have coverage for injuries sustained by participants while exercising unless the injuries were related to faulty equipment. Case law has demonstrated that brokers are under an obligation to set out gaps in coverage in writing.

CLAIM SCENARIO 2:

OUTCOME CONTINUED:

Based on the abovementioned facts, defence counsel estimated the client's liability exposure in the range of 40% to 60%. If coverage had been in place, the client would have been entitled to both defence expenses and indemnity for the claim. The matter was settled for $60,000.00.

CLAIM SCENARIO 3:

Insured Becomes Broker of Record for Client in which Marine Insurance had been Previously Placed

FACTS:

The client transferred their business to the insured broker. Several years later, the client was subcontracted to supply a safety boat and operator to assist the main contractor and its vessels in the removal/demolition of a high level bridge spanning the St. Lawrence River between Canada and the United States.

The client had made renewals of the marine policy through an insurer that had been the client's insurer prior to becoming the broker of record. Prior to 2012, the client had coverage in place with another insurance broker. When the insured took over as broker of record in 2012, changes were made on client's fleet and liability policies, but not on its marine policy.

CLAIM SCENARIO 3:

FACTS CONTINUED:

The client had in place with the insurer a marine hull policy and no changes were required. Only one vessel was identified on the policy, with $50,000.00 in coverage for the hull and $5,000,000.00 in liability. The vessel was described only as a "2003 32ft barge built by xxxxx valued at $50,000.00".

The client did not disclose that it had any other vessels, and the insured was advised to leave coverage with the insurer as it was.

CLAIM SCENARIO 3:

FACTS CONTINUED:

On June 22, 2015, the client attempted to position a barge and anchor using a vessel that it owned, being the L.C.M. 131. The L.C.M. 131 vessel was forced into the barge by the current and was swamped, capsized and then sank. The L.C.M 131 vessel then became wedged between the barge and the bottom of the river, were it remained for a number of weeks until the area was considered to be clear of any escaping fuel. Subsequently, the L.C.M. 131 vessel was salvaged. The client did not disclose that it had any other vessels, and the insured was advised to leave coverage with the insurer as it was.

After learning of the incident, the insured presented the claim on behalf of the client to the marine carrier. The marine carrier retained a marine surveyor to investigate the claim. The marine surveyor concluded that the vessel involved in the incident was not the insured vessel.

CLAIM SCENARIO 3:

FACTS CONTINUED:

The main contractor filed a Statement of Claim against client and the insured broker. The main contractor claimed against the broker for damages due to negligent misrepresentation, that they had obtained the proper coverage for the client. Moreover, they claimed against the insured, the cost of the salvage operation. The costs were estimated to be in excess of $2,000,000.00.

Insurer retained defence counsel to defend the broker.

CLAIM SCENARIO 3:

DISCUSSION QUESTIONS:

1) Is the broker exposed to liability? Why/why not?
2) What could the broker have done to avoid this claim?

CLAIM SCENARIO 3:

OUTCOME:

Defence counsel attended a federal court case conference with presiding judge. After a discussion of the merits of the case, counsel for the plaintiff concluded that even if they were successful against the sub-contracted client, there were insufficient assets to cover the loss. Moreover, it was concluded that the odds of recovery against the insured broker were very remote. The plaintiff withdrew the claim.

CLAIM SCENARIO 4:

Broker issues pink slip for a vehicle without authority from Insurer

FACTS:

The insured broker placed automobile coverage for a client for four trucks used by the client to haul goods across Canada. The insurer would only insure the trucks that were listed on the schedule to the policy. The client requested that a fifth truck be added to the policy.

In an attempt to expedite the process, the broker issued a pink slip to the client for the fifth truck prior to confirming with the insurer that the fifth truck should be added to the policy. When the broker finally required that the insurer add the fifth truck to the policy, the insurer requested additional information from the client and refused to add the fifth truck to the policy until the additional information was provided. The broker immediately sent the client an e-mail message requesting the additional information; however, this information was never provided.

Shortly thereafter, the fifth truck was involved in an accident and was destroyed with no salvage value. The insurer denied the client's claim as the additional information was not provided and, therefore, the fifth truck was not added to the policy.

CLAIM SCENARIO 4:

FACTS CONTINUED:

An action was commenced by the client against the insurer and the broker. The client is seeking coverage under the policy and punitive damages in the amount of $25,000 against the Insurer and they are seeking $100,000 in damages for negligence against the broker with respect to failing to add the truck to the policy as requested. The insurer has issued a crossclaim against the broker for issuing a policy without authority.

RSA has retained defence counsel to defend the broker Each party to the action, including the broker, will be examined by opposing counsel in the coming months.

CLAIM SCENARIO 4:

DISCUSSION QUESTIONS:

1)Did the broker bind coverage by issuing the pink slip?

2)Did the broker exceed its authority by binding coverage?

3)Who do you think is exposed to liability?

4)What could the broker have done to avoid this claim?

CLAIM SCENARIO 4:

POTENTIAL OUTCOME/STRATEGY:

This action will be a dispute between the defendants over who is responsible to pay the plaintiff's damages. This claim will likely settle with a contribution from both the broker and the insurer. The broker is exposed to liability because it provided a pink slip to the client on the mistaken assumption that coverage would be bound without any problems. The broker's defence is that it had binding authority from the Insurer and was not acting outside its scope of authority. However, even if the broker exceeded its binding authority, the Insurer is exposed to liability because it is likely that the insurer would have added the fifth truck to the policy if the requested information had been provided and simply increased their premium if the risk was greater.

CLAIM SCENARIO 5:

Broker completes Application on behalf of Client

FACTS:

The insured broker obtained a homeowners policy for the client through the "hard to place homeowners program". Shortly thereafter, the client's home was destroyed by a fire. The claim was denied when the insurer discovered that, contrary to what was stated in the Application, the client had a number of previous fire loss claims. After this discovery, the Insurer immediately voided the policy.

An action was commenced by the client against the insurer and the broker.Against the insurer, the client is seeking damages in the amount of $1,191,600 as well as punitive, exemplary and aggravated damages in the amount $100,000. Against the broker, the client is seeking $1,500,000 in damages for negligence and/or breach of contract.

CLAIM SCENARIO 5:

FACTS CONTINUED:

He said she said…

The broker met with the client, asked the client the questions that were on the Application and completed the Application accordingly in the client's presence. Two of the questions were whether there had been any losses or claims by the applicant or other members of the applicant's household in the past five years and whether the applicant had more than one fire loss in the last five years. The client verbally advised the broker that the answers to both questions were "no". Based on the client's answers, the broker marked "no" on the Application with respect to these two questions. The client signed the Application after it was completed.

The client's evidence, however, indicates that he advised the broker of the previous claims at the time the Application was being completed by the broker and the broker failed to record the previous claims on the Application. When asked why he signed the Application when the answers to the questions were clearly incorrect, the client advised that his English is poor and, therefore, he simply signed the form based on the broker's recommendation.

The broker's file contained only the signed Application and the policy documents and did not prove or disprove either party's version of the events.

CLAIM SCENARIO 5:

DISCUSSION QUESTIONS:

1)What exposes the broker to liability?

2)What could the broker have done to avoid this claim?

CLAIM SCENARIO 5:

POTENTIAL OUTCOME/STRATEGY:

It appears that we have a defensible claim. The Application was signed by the client and there was no indication of the client's supposed poor command of the English language. The client certainly did not advise the broker that he could not read English at the time he signed the Application. It is likely that the broker's evidence will be believed if this matter proceeds to a trial as the client has not produced any evidence to support his claim that he could not read English. A settlement offer for a nominal amount will be offered to the client in order to avoid a drawn out litigation. If the client does not accept our offer, we may want to consider proceeding to trial.

CLAIM SCENARIO 6:

Broker sued for gap in coverage

FACTS:

The insured broker originally obtained homeowners insurance for the client with $420,000 guaranteed replacement cost for the home and $315,000 replacement cost for contents; however, at renewal, the insurer did not renew the policy due to the clients claim history. As a result, the broker placed homeowners insurance for the client through the "hard to place market" with a different insurer. Under the new homeowners policy, the client had $600,000 replacement cost for the home and $270,000 replacement cost for contents. Shortly thereafter, while a contractor was completing renovations to the client's home, a fire started and the home was destroyed. The insurer paid out the limits under the policy.

An action was commenced by the client against the contractor and the broker. Against the contractor the client is seeking $500,000 for causing the fire. Against the broker, the client is seeking $600,000 in damages for failing to provide sufficient building and contents coverage.

CLAIM SCENARIO 6:

FACTS CONTINUED:

RSA retained defence counsel to defend the broker. Each party to the action, including the broker, was examined by opposing counsel.

The broker's evidence was that the policy was only placed after the he met with the client and explained the difference between replacement cost and guaranteed replacement cost and also explained that the limit on contents was $275,000 as opposed to $315,000.

It is the broker's position that guaranteed replacement cost was not available in the "hard to place market".

The client's evidence is that he was under the impression that although he changed insurers, the homeowners coverage under the new policy would be the same as it was under its previous policy. It is the client's position that he was not advised that the building was now only covered on a replacement cost basis and that the limit for contents had decreased.

CLAIM SCENARIO 6:

DISCUSSION QUESTIONS:

1)Is the broker exposed to liability? Why/why not?

2)What could the broker have done to avoid this claim?

CLAIM SCENARIO 6:

POTENTIAL OUTCOME/STRATEGY:

A mediation took place and the Plaintiff settled this matter with the broker only. The contractor and the Plaintiff are still proceeding with the litigation. The broker was exposed to liability as the values used in the software program were not accurate which led to the building being underinsured. As well, the Plaintiff was also significantly underinsured with respect to its consents coverage. The settlement amount was not in the range of what the Plaintiff was asking for and only reflected the broker's exposure in the matter.

THANK YOU!