



The Role of the Insurance Broker by Dennis M. Foerster

Insurance brokers have been described as being in the middle because at different times the broker represents the interests, or is the agent, of the insured and the insurer. This article will set out some of these difficulties and the broker's role in the formation of an insurance contract.

In an agency relationship the agent represents a principal, the person for whom he or she is acting. The key aspects of the agency relationship are that an agent has the authority to bind the principal and, generally speaking, when the agent has actual knowledge of certain information the principal is deemed also to have this knowledge. The role of an insurance broker is crucial for the formation of the insurance contract because in most situations the insured and insurer never have direct contact with each other.

When acting for the insured the broker is responsible for conveying the information about the insured's needs and to explain the limits or gaps in coverage in a policy offered by an insurer. In turn, the broker is

the agent for the insurer to bind coverage according to the terms provided by the insurer to the broker. When acting in these capacities, because the broker is an insurance specialist, the broker has a duty to ensure that he or she has accurately gathered and conveyed the necessary information from the insured.

When presenting the insurance contract for review by an insured, the insured is entitled to rely on the professional expertise of the broker. Most people do not have the specialized knowledge to interpret a contract of insurance or know any potential gaps in coverage. The courts have therefore consistently found that a broker has the legal duty to advise whether a policy meets the needs of his or her client and explain any gaps or limits of the policy presented.

Suppose an insured seeks coverage for a home that the owner wishes to use as a rental property. A quote from the insurer indicates that they are only prepared to offer a policy and quote for coverage for a home to be used as a residence

by the owner. The broker does not highlight this fact to the insured and the insured accepts the policy and coverage is bound. During the policy period, while the home is being rented, the home accidentally burns down.

The insured will advise the insurer of a claim, but during the insurer's investigation they discover that the property was being rented and therefore is a risk which the insurance does not cover. The contract between the insured and insurer is clear and therefore the insured would most likely not be successful in pursuing a claim against the insurer. The broker however has breached his or her duty to the insured by failing to advise the limits or gaps in coverage initially offered to the insured. In this situation the broker would most likely be found liable.

Usually, through the professionalism and expertise of brokers, such a blatant failure is quite rare. There have been a significant number of cases that have explored the responsibility of brokers to both the insured and insurers. The duty,

however, owed to the insured is to do nothing more than advise of any limits or gaps in coverage. The decision is always that of the insured.

In the above example suppose that the broker advised the insured that the policy offered is only for an owner occupied residential home and therefore coverage would not be available for a rental property. With this knowledge an insured may still want to take the policy because the cost of the insurance, the premium, would be much lower for an owner occupied home than for coverage on a rental property. Sometimes people are willing to take the risk to save some money. In this situation the insured would not have coverage through the policy and would not likely succeed in a claim against the broker. You can be sure that this information conveyed by the broker will be noted in his or her file indicating when this was discussed and how the insured responded.

In future articles I will discuss the unique features of the insurance contract and specifically what information an insured is obligated to provide

an insurer as well as insurance litigation when things go wrong.