Bad Faith Bargaining

Some brokers think it’s necessary to roll over books-of-business between markets in order to retain their customer base. Others view it as an opportunity to communicate with clients and demonstrate the value they provide. But, as in all aspects of service, the adage “haste makes waste” prevails.

Consider the situation of a broker facing one rollover after another. Compounding frustrations, she realizes that she made a mistake with a client’s coverage while switching it from one insurer to another. In her mind, she attempts to justify her actions by saying the coverage was similar, although not exactly the same.

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Flipping books of business from one market to another at the instigation of a broker raises a number of ethical issues and is hard to justify.

When it is necessary to move a book of business, a broker must reserve the right to not absolutely guarantee all files to the new carrier if better options for a few customers are available elsewhere, as well as the right to make those decisions. It’s also true that the company on the receiving end may have problems with some files and that may need to be considered before making the decision in the first place; particularly if a certain file may prove difficult to place elsewhere.

The most ethical procedure is to move clients only on an individual basis where a better solution exists.

Some insurers, depending upon market conditions, will offer an additional override or additional commissions supposedly to offset the additional cost of moving a book of business. Even if the broker discloses the additional commissions to clients, there still remain a number of issues.

It would be unusual that all the clients in any book of business would benefit by a change of carriers. Seldom would we expect that all the clients would receive the same or lower premium for the same or better coverage.

With respect to auto policies, what happens to accident forgiveness when carriers are changed? Some carriers offer a plan that allows a client to have two at-fault accidents and still be rated as a six-star driver. How is that driver treated by the new carrier? Is that client now a facility risk?

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The issue here is the broker’s motivation for such an action and the potential impact on the client. Is the broker moving the portfolio because of
the enhanced commission offered or a financially attractive override? Is the action prompted by a genuine desire to improve the product and the service offered to that client?

If the motivation is truly client-based, there is nothing wrong with nominal financial assistance to help cover the expense of moving business to a new and different insurer. If, however, the motivation is to receive an enhanced personal commission there is a clear conflict of interest. Can you explain to a client that the road you chose was not for personal, and selfish, gain?

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This is a broker in trouble. She appears to be rolling her portfolio on a regular basis, meaning the brokerage’s markets aren’t stable, the portfolio is suspect, or income incentives are regularly being offered to flip the book to an eager new market. Regardless of the reasons, clients clearly suffer from this practice.

It could be suggested that this broker may be spending more time negotiating improved financial benefits for herself than investing time and resources in negotiating improved terms for clients.

This is a very dangerous practice, resulting in the inevitable oversight illustrated in this scenario. At a minimum, any broker negotiating a rollover should stipulate to the incoming insurer that replacement policies offer coverage at least as broad as before. If the new insurer isn’t prepared to protect the broker in a mass rollover, then the intermediary should never make those kinds of guarantees.

The situation described implies that the broker informed the insured of the change in markets, and we can only presume that the reasons were convincing. Her defence that cover would be similar but not exact is insulting to the client’s intelligence and would further bury this broker in court.

The first action would be to appeal to the insurance company, noting that this oversight had occurred due to the hectic activity encountered as a result of the rollover and request that cover be afforded retroactively. This appeal would be considered, based of course on the quantum of the loss and the broker-Insurer relationship.

If that didn’t work, offering a quick settlement to the insured would hopefully retain the account and avoid an errors and omissions claim, not to mention the legal expenses of the insured.

There’s a lesson to be learned—don’t make a practice of moving business without a solid action plan. If the motivation is increased income, this is very short-sighted, especially if done in haste.