Duty to Disclose

The CIP Society Ethics Series

The CIP Society
Insurance Institute of Canada

The CIP Society represents more than 16,000 graduates of the Insurance Institute of Canada's Fellow Chartered Insurance Professional (FCIP) and Chartered Insurance Professional (CIP) Programs. The CIP Society, through articles such as this, is working to bring ethical issues to the forefront and provide learning opportunities that enhance the professional ethics of all insurance professionals.

Sound business decisions may not always bode well for client relations, and when they don't, is the broker duty-bound to tell the client?

Business decisions that seem sound may not always be good for client relations. Here is one such scenario:

A longstanding broker with an excellent track record is in the midst of a business rationalization exercise, looking for efficiencies and an overall competitive edge. He determines he should trim his insurance markets from four companies to three. The nature of his client base suggests that retaining three smaller insurers would allow him to offer a good product mix. The clients currently with the large, dropped company would then be rolled into one of the three remaining companies. The smaller firms could meet the needs of each of these new clients.

In this scenario, one large commercial client represents an important piece of business for the broker. The client met with the broker a few years earlier when transferring his policy to the brokerage. At that time, he suggested he was happy with the advice and service he received. But one condition existed to earn his business, and this condition wasn't covered by any of the questions on the application form. Specifically, his board of directors insisted the company's insurance carrier be of a certain size, bond rating and profitability. Before the rationalization process, the brokerage always met this condition. But now that the broker was rationalizing his markets, none of the remaining three companies met all of these requirements. The broker began pondering his next move.

Is it necessary for the broker to mention this fact to the client? It is not on the application form or any of the paperwork. In fact, this condition is not recorded anywhere except in the broker's memory. Should the client not investigate this matter on his own in due course? What is the broker's responsibility?

FIRST WORD...

Industry professionals commenting on this scenario all stipulated, albeit paraphrasing, the situation is covered in the Insurance Institute of Canada's *Code of Ethics*, which governs Chartered

Insurance Professionals (CIPs and FCIPs). The code states:

- Institute graduates shall not wilfully misrepresent or conceal material fact in insurance and risk management business dealings in violation of any duty or obligation.
- Institute graduates shall use due diligence to ascertain the needs of their client or principal and shall not undertake any assignment if it is apparent that it cannot be performed by them in a proper and professional manner.
- Institute graduates shall not fail to use their full knowledge and ability to perform their duties to their client or principal.

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COMMUNICATE AND INFORM

Roberta Zurrer, CIP, CCIB
Commercial Lines Manager,
McDougall Insurance & Financial

It is definitely necessary for the broker to discuss the change in markets to the client. This particular client is responsible to his board of directors, so by moving his account to a market that does not meet the conditions outlined, the broker is not only risking letting down the client, but also the board of directors.

In this situation, the broker can do his best to communicate the issue and try to retain the client. Even if the broker is forced to refer his client to another broker as a last resort, the customer is likely to respect the broker not only for his honesty, but also for his ability to take care of the customer.

ENSURE FULL DISCLOSURE

Thomas Newby, CIP, CRM, CAIB
Commercial Account Executive,
T.G. Colley & Sons Ltd.

One role of commercial insurance brokers is to provide every piece of relevant information to their clients, allowing the clients to make an informed decision. Full disclosure works both ways: brokers rely on clients to divulge details pertinent to the business and insurance, and so brokers must reciprocate as well. Whether a client bases its decision on the insurance company's bond rating, profitability or the types of coverage or limits it offers, the client relies on the broker to be his or her trusted advisor and assist with these decisions.

If the brokerage is no longer a proper fit for the client because of the change in insurance markets, the broker has a duty to inform the client and make suggestions or offer a solution. The decision cannot be made on behalf of the insured without his knowledge.

IDENTIFY MATERIAL CHANGE TO RISK

Tracy Makris, CAIB, CIP
President,
Bryson & Associates Insurance Brokers Ltd.

As insurance professionals we should understand that full disclosure is fundamental to our business and the broker's responsibility. Professional insurance brokers separate themselves by understanding their clients' needs and meeting their requirements.

In this scenario, the client provided clear information that the size, bond rating and profitability of the market was a requirement for his business. A material change is not a one-way term; it is the broker's ethical duty to inform and educate his client of any change of which he becomes aware. The ultimate decision on how to use that information must come from the client, not the broker, although the broker is there to provide appropriate guidance.

For best practice, the broker should initiate client communication that involves, for example, changes in the status of insurers, restrictive trading areas, and coverage lines.

ENSURE APPROPRIATE CHOICE AND COVERAGE

Nadine Austin, FCIP
Senior Investigator,
Complaints & Investigations Department, RIBO

In this situation, the requirement for markets is two-fold. For obvious reasons, a brokerage has to be able to offer product comparisons, and these comparisons represent a choice for the client. The broker also has an onus on them to be candid and honest, which is a fundamental to what is considered good conduct in the industry. If the broker has any hesitation that the market he has chosen may not be able to respond to a catastrophic need should it arise, the broker has a duty to disclose any facts that he may have as well as the nature of the problem.

The broker has an obligation to investigate the capacity of the markets and inquire further about the requirements set forth by the board of directors. With this information, he may be better able to assess the compatibility of the markets he is offering and communicate this to the client.

If his markets can't fit the bill for the client, he should disclose this to the client and look for an alternative solution. One such solution would be to set up a sub-broker situation. The broker won't get all of the commission, but he may be steering away from what can ultimately end up being a very sticky situation in a claims scenario.

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ASSESS OPTIONS

Ray Arndt, BA, CIP
President,
Lyon & Butler Insurance Brokers Ltd.

If the broker has made a final decision to rationalize his markets, as suggested in the scenario, he should provide his client with any recommendation he has in regards to the change in insurance carrier. He should discuss the pros and cons of the change, and present any benefits should the client decide to stay on with one of the remaining companies.

The broker's knowledge of the client's expressed interests, and that of his board of directors, is as relevant and material as what is written down on paper, or anything else noted in his computer system. It is a known fact and has to be part of the conversation.

There are then a few options to discuss with the client:

• If the broker can identify an MGA that can continue the insurance program with the existing insurance company, will the client accept the amended paperwork?
• Does the client want to stay with the broker if the brokerage decides to change insurance carriers?
• Is the client willing to discuss with his board of directors the insurance company selection criteria to see whether or not it will reconsider and be satisfied with one of the insurance companies the broker has selected?
• Is the client willing to recommend any of the above options, if he so chooses, to the board?
• Does the client want the broker to present his argument to the board?
• If all else fails, does the client want the broker to recommend another brokerage which can then continue his insurance program with the existing insurance company?

I truly believe that our part of the relationship with our clients is to be their trusted advisor — so we better live up to those words.

LAST WORD . . .

At the end of the day, the insurance professional's fear of losing the client should be superseded by the fear of that client having a loss for which they are not covered due to miscommunication, non-disclosure or negligence.

By applying an ethical standard to business decisions and not relying merely on legal requirements or the information requested on an application, the broker will have provided a higher duty of care to his clients, his contracted companies and the industry.