How Much is Enough?

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.

Commercial brokers can sometimes find themselves caught in a discrepancy between how much coverage their clients think they need and how much coverage brokers believe their clients require. How much counsel is enough?

Brokers in their role as advisers are often caught between their own versus their clients' understanding of what constitutes the right coverage, for the right price, for the potential risk. Here is one such scenario:

Feeling the pressure of the challenging economic times, the owner of a small manufacturing business was determined to cut costs. The company's commercial insurance policy appeared to be a potential target because it was due for renewal. The owner chatted informally with a local broker to whom he had promised an opportunity to quote on his business. The broker was motivated to win this account, since the business owner was an influential person in the community and securing his business might open up other business opportunities. However, the broker understood the price sensitivity attached to the quote.

When discussing coverage, the broker suggested reducing the amount, since this would save the business owner considerable premium dollars. The broker suggested the amount of liability insurance currently in force was excessive, given that he did not know of a claim of that magnitude ever successfully settled. The client's intent to save money provided the justification for the broker's proposal, and so the broker felt further research was not warranted.

Do you feel the broker was well informed and advising his client appropriately? Do you feel that the client was well informed and being advised appropriately? If not, then how was the thought process misguided?

Randy Bushey,
CIP General Manager,
Knox Insurance Brokers Ltd.

When the "cheapest price" is the dominant feature in a buying decision, it is particularly difficult for brokers not to compromise their legal and ethical responsibility to the client. This scenario helps explain why.

The nature of most liability claims is this: they get settled many months or years following the incident that gives rise to the claim. Often the largest claims settle five to eight years, or longer, after the damage or injury was sustained.

Therefore, when a broker assists their client in making an informed decision, the discussion needs to review past and current legal judgment decisions — but with a view to the future. Today's decision about liability limits may be called upon to provide protection against a court judgment years down the road.

Here is a question for the client: If you are defending an action in court in 2020, what liability limit will you wish you had purchased in 2012? In that context, it is almost always unwise to recommend a reduction in liability coverage limit.

The final buying decision always belongs to the client. But the broker must be able to look in the mirror knowing that she met her legal and ethical responsibility, providing to her client informed and prudent advice in protecting against risk — now, and well into the future.

Carla Martin, CRM,
Vice President,
HKMB Hub International

If the broker really wants to position himself as a trusted advisor to this client, he should do his homework, get to know his client's business and help the client understand his business risks. Here are a number of steps that could be taken:

- The client should review his contracts with all his major customers to see what limit they require him to carry as the manufacturer (particularly if he is selling to regional, national or international retail chains).
- The broker could review the insured's website to see what implied "warranties or guarantees" are being given to customers.
- The Canadian-based client and broker should review the number of sales the company makes in the United States and other foreign countries and let the owner know about U.S. litigation. Also, the higher the sales figures, the more you need adequate limits.
- The broker should gather information about recent lawsuits involving his client's industry profile in Canada, the United States and other jurisdictions as appropriate.
- The broker should inform the client that he could sell his product to a customer in Canada, who in turn could

The issue here is not just one of a broker's errors and omissions risk. It is also one of ethical behaviour. Part of our commitment to clients is to keep them abreast of new coverage, coverage restrictions and insurance-specific case law.

sell it to a U.S. entity, and he might not even be aware of that.

- Suggest that he look at higher deductibles in order to reduce his premium.
- The broker should check to see if there is any benchmarking for his specific industry profile, regionally, nationally and internationally.
- The broker might emphasize to the insured that his liability policy also pays for defence of a covered loss. This should also be taken into account with respect to the limit.
- The broker could provide assistance regarding "risk management," assisting the insured with their product quality control, keeping detailed records, making sure all employees are trained properly and any other safety tips.
- The broker could explain to the insured that the cost of higher limits can be far less than the consequences of having inadequate insurance limits if a catastrophic claim occurs.
- The broker could offer a finance contract to the insured to assist them with paying their insurance premium over a period of nine or 10 months.
- The broker could provide a quotation for various limits.

Ultimately, in the end, it would be the client's decision. But both the broker and the client need to know that risks were considered, advice was given and a signed acknowledgement from the client would be required to that effect.

Maurice Audet,
Aon Reed Stenhouse

What is a broker's obligation to advise clients of appropriate levels of coverage? Based on the 1977 Ontario Supreme Court [now the Court of Appeal] decision in *Fine's Flowers Ltd. v. General Accident Assurance Co. of Canada*, a broker is obliged to do more than simply issue a policy.

Insurance brokers have an obligation to provide advice as to the availability of coverage, arguably the appropriateness of insurance policy wordings and the adequacy of insurance limits. Recently, I was asked what would be appropriate liability limits for a local contractor to carry. While not a local manufacturer, the question of acceptable levels of liability coverage struck me as similar. I was advised that local contractors did not purchase more than $5-million limits; since there were no claims in Canada exceeding this amount, the brokers would not advise their clients to purchase higher limits.

First of all, many judicial awards and settlements in Canada have exceeded $5 million. For a broker to advise his or her clients properly, it is imperative that brokers educate themselves about the state of the law with respect to damages and to advise their clients accordingly. At the end of the day, it is up to the client to decide what limits to purchase. But the broker has an obligation to provide proper advice and not simply tell a client what the client may want to hear. A client may choose, for competitive reasons, to purchase lower limits, but they should be made aware of the consequences.

The issue here is not just one of a broker's errors and omissions risk. It is also one of ethical behaviour. Part of our commitment to clients is to keep them abreast of new coverage, coverage restrictions and insurance-specific case law. We are not lawyers, but we do have an obligation to keep abreast of changes in the legal climate and to communicate these to our clients.

THE LAST WORD . . .

The role of the commercial broker is to provide sound risk assessment and professional advice on the best insurance coverage, products and price, to the best of their ability. Brokers must not reinforce misconceptions about insurance limits that do not accurately reflect potential exposure. For example, a manufacturer may require limits that are higher than what is standard in the industry for a variety of reasons, which should be identified. It is a broker's ethical obligation to ensure that the client understands why they require the coverage they need, even if the client and/or the community has historically accepted lesser amounts. As suggested above, many ways exist to ensure fuller understanding of the client's business and risks.

The broker's role is to ensure his or her clients are well informed, well educated and capable of managing the risk transfer on behalf of the client.