



**A broker and a long-time client** were enjoying a chat. The broker thanked the client for her loyalty over the years with auto insurance. The client responded by explaining what a difficult time she was having obtaining house insurance due to several at-fault fire damage claims submitted in the recent past.

The broker indicated that he would do all that he could on her behalf in this regard.

In order to garner the necessary details for this file, the broker asked her whether the client lived at the same location. The client indicated that their property was recently sub-divided and now their newly-built house faces the next street, thus their civic

relationship with the insurance company and with the underwriters is as critical to his or her success as his relationship to clients. As such, a broker shouldn't jeopardize a relationship with an insurer in favour of a particular client's issues.

As one broker put it: "The broker has a responsibility to protect his clients' assets as well as the insurance company

ish the blameless, or impose outrageous penalties). In other words, it is the broker's responsibility to find the correct market appropriate for the risk, even if it's not the 'silk purse' that the client would prefer.

According to one broker: "The key factor is that recent fire damage claims were determined to be her family's fault." This is a material fact that must be disclosed to any prospective underwriter, regardless of the new situation in ownership and address. The client can change names, subdivide, do anything they want, but the broker can not hide the facts of at-fault losses in a submission to underwriters. A broker's job in representing a client is similar to a lawyer's—present the client's case in the best possible light but never hide the facts.

One issue worth noting is how the client views the relationship with her broker and the insurance contract. Helping clients understand the responsibility of all parties to the insurance contract is part of the broker's communication and relationship-building role. It is important to help clients appreciate that the contractual agreement is based on "utmost good faith" from all parties. The client, then, is obligated to reveal the past at-fault claims and should not be looking to the broker to conceal these aspects which are material to the risk being underwritten.

As part of her responsibility in the contractual part-

## Making a Silk Purse out of a Sow's Ear

address had changed to reflect this. Also, as the former house and insurance policy were in the husband's name, and he wanted to protect his assets from creditors, he switched everything into her name. The upshot of all of this is a new client at a new house at a new address. The broker thought that if he was "economical with the truth" he could slide this file past the underwriters and get his client a good rate. Is he wrong?

Any misrepresentation or omission of the truth would contravene the Insurance Institute's Code of Ethics which stipulates that CIPs "shall not willfully misrepresent or conceal material facts."

As an ethical professional, all brokers should build their reputation on the values of trustworthiness, integrity and consistency. A broker's

they are representing. There is always an appropriate market for each and every risk. The broker should always disclose all relevant information for consideration, including claims history, new address, new ownership, etc."

This means that a broker needs to be fair to all parties, including clients and insurers and should make decisions based on information objectively gathered and impartially evaluated. The process of gathering information and evaluating the risk should be transparent and open for all to see—including the underwriter and, in the event of a claim, the claims adjuster. The broker's actions taken as a result of fair decisions should be both equitable (applying to all clients and all insurers) and proportionate (they do not reward the undeserving, pun-

nership, the client should be taking appropriate measures to prevent risks. One important question that the broker should ask: What steps have you taken to prevent similar at-fault circumstances from happening again? If the client has not taken any risk prevention strategies, the broker can offer some suggestions to mitigate the risk of another occurrence. If, or when, the client has taken preventative steps, these should be presented to prospective underwriters. It would demonstrate good faith on the client's part if they demonstrate that they are working to prevent any more fires.

If the past at-fault claims were not properly disclosed to an underwriter and another loss occurred, the insurer would have a strong case to deny the claim on the basis of misrepresentation and possibly fraud. Does the client understand these implications? Does the client appreciate that such a request jeopardizes the

broker's license and reputation? In the long term, such a claim could damage the company-broker relationship, possibly create an E&O situation for the brokerage and/or cause an insurer to cancel the broker's contract.

In this scenario, the client was forthcoming with the information and the broker is trying to decide how best to handle it. But sometimes the client does not provide full disclosure. The question then becomes to what extent is it the broker's responsibility to ensure that the information pro-

vided in the application for insurance is complete? The insurer and broker have an obligation to ask the right questions—material to the risk in the first place—but the client is solely responsible for the accuracy and completeness of information supplied in the application for insurance.

"If I lose the client because I won't do things their way, because of questionable ethics, so be it," explains one broker. "This business is a marathon not a sprint. Thankfully it is extremely rare that this ever comes up." 🙄

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