

## Working online may affect E&O claims

BROKERS are much more likely these days to do business online than at someone's kitchen table, and that change could make them more vulnerable to an errors and omissions claim.

One in four brokers will have an E&O event in their career, participants at a recent Insurance Institute of Northern Alberta online seminar were told.

Industry instructor and former broker Kelly Parrott led the session titled 'Prevention and Practice – A Professional E&O Story.'

She noted that E&O claims can be triggered by a number of things, such as failure to recommend coverage, inaccurate or incomplete information provided to an insurer and failure to identify exposures.

As the insurance business has moved online, relationships between brokers, clients and underwriters have changed and become less personal, Ms. Parrott said.

Contact with clients was mainly in-person in the past, but now 57% of contact is now done by email, and 33% by phone. Only 5% of business is done face-to-face.

There are pluses and minuses to working through email, she said. On one hand, all instructions from clients come in writing.

However, when corresponding by email, brokers often resort to briefly summarizing extremely complicated legal wording in a few sentences, and that can lead to inaccuracies.

Having less personal contact with clients means that brokers have less understanding of the client's tolerance for risk, Ms. Parrott said.

"The agent owes a duty to the consumer to assist them through the complicated process of buying insurance."

She recommended that brokers regard renewals as an opportunity to have a conversation with clients to obtain up-to-date information about their needs and help create a bond.

"Every time the client contacts you it is an opportunity to update the file," she noted.

Creating a bond with a client can not only improve the broker's understanding of the client's needs, but studies have shown that it can also make the client less likely to bring an E&O claim against the broker.

Brokers need to take the time to really listen to clients to understand what they actually want and need, she said, noting that asking the right questions usually results in selling the right coverage.

Careful documentation is another key thing brokers should do, she added, as everything that is put into the customer's file should be able to protect a broker if an E&O claim goes to court.

Ms. Parrott also advised that brokers should not be reluctant to talk about mistakes at the office. Discussing mistakes will help everyone learn and it can also lead to working out solutions, she said.

## Pandemic expected to extend hard market

HARD MARKETS are rarely seen across the board in the insurance industry but COVID-19 could change all of that, the president of a B.C.-based MGA has warned.

"We're going to see it in multiple lines of business with multiple insurers," said Mark Woodall, president of Special Risk Insurance Managers, during an online symposium titled 'Navigating a Difficult Market to Success,' which was hosted by the Insurance Institute of B.C. last week.

"I believe that we'll ultimately be able to negotiate our way through it, but it's clearly not going to be without some real difficult times," he said.

During any hard market, he said, it becomes difficult to place insurance business. Prices increase, there is reduced underwriting capacity and higher losses and a reduced return on investment.

Mr. Woodall noted that hard markets can be created by conditions outside of the insurance industry, including major events such as COVID-10 or massive natural disasters that lead to high loss ratios and low returns on investments.

But some elements of a hard market can also be caused by factors from within the industry itself, he said, noting that insurance professionals at both the broker and underwriting levels too often sell products they don't fully understand.

One area where that can happen is with

MGAs, which often sell a broad range of insurance, including types they don't have specialized knowledge about, Mr. Woodall said.

Insurers have also been giving away too many add-ons, he said, and they can become very expensive at claims time.

To get through the current hard market, insurers will need to be savvy, he said.

Going forward, brokers must not sacrifice coverage for price. No one would have bought pandemic coverage before this event, because it seemed too expensive to justify. Clients need to be reminded of the value they are getting for the cost.

He said brokers need to understand the ins and outs of the coverage they're selling and how it fits with their clients needs, which brokers should know better than the clients themselves. He also said brokers should try to go back to multi-year policies as often as possible and that brokers should show loyalty to insurers who are providing good services.

"This is going to be our worst financial period in 50 years," Mr. Woodall said. But he added that the insurance industry is resilient and will come through the other side.

"We thought we went through hard markets in the past...but this hard market that we're in now, with COVID-19, will be something that we would have never anticipated, never seen and we'll end up wondering someday how we were able to navigate it so well."

## Home business exclusions may not apply

MANY WORKERS, including insurance company and brokerage employees, are working from home during the COVID-19 pandemic.

But are they covered by their home insurance for third-party liability claims?

As is usual with questions of insurance law, the answer is: It depends.

Normally the difference between working from home and working from a place of business is fairly cut and dried. A home insurance policy may contain an exclusion that reads something like, "We do not cover loss, damage or expense caused by or arising out of any business or occupation being conducted in the residential premises, from which you derive an income."

But that may have changed with government orders closing businesses due to the risks of the pandemic. The Vancouver law firm Clark Wilson recently wrote:

"If an insurer denies coverage due to the business exclusion, it is possible that a court may rely on the (B.C. Insurance Act) unjust contract provision to find that it is unfair for the insurer to rely on the exclusion in the

circumstances.

"With that said, insurers should not assume that reliance on the business exclusion will automatically trigger (section 32) but should continue to assess coverage on a case-by-case basis."

Meera Jain, an associate with Clark Wilson, said liability risk would not arise in most cases where an employee is simply working from a laptop and not bringing clients into their home.

"The only cases that have considered the business exclusion clause in British Columbia have been where someone has offered a marijuana grow up, a woodworking workshop and then a kind of rooming house," she told *Thompson's* last week.

"Obviously those type of businesses have a very different kind of liability than a regular home insurance policy would cover.

"So depending on the nature of your business (application of an exclusion clause) may or may not be unjust.

"There's no way to know, and I think the better option is to inform your insurer if you are unsure."