



Current Articles 2000 – May

Has your client's Insurance requirements changed ???

The current automobile policy was introduced in November 1996 - over 3 years ago. When Bill 59 replaced the previous Bill 164 plan companies were required to forward to clients along with renewals the IBC pamphlet titled "Your Automobile Insurance has changed". In addition most brokers sent their own pamphlets or letters directed at the possible need for Optional Accident Benefits and specifically reminding clients that Bill 59 has reduced the Income Replacement benefit from \$1,000. per week to \$400. per week Many such brochures also identified the other available optional benefits such as Increased Caregiver, Death and Funeral Expense , Increased Medical and Rehabilitation and Indexation.

Income Replacement Benefits are a secondary payor to any collateral benefits such as a group or private disability plan that a particular client may have. But what if a client's situation has changed?

A recent action has been commenced for the following situation: A broker advised his clients at the introduction of Bill 59 (Nov. 96) of the reduced Income Replacement Benefit and suggested that the client contact the broker if there was no collateral benefit available and that the basic \$400. per week was insufficient. At that time the client was working for a large corporation and had a benefit plan that was sufficient and would not have needed any increased weekly income.

A year later the client left his employer and with a relative set up a private business. The business was extremely successful and at the time of the accident was supplying a gross income in excess of \$90,000. annual. There was no collateral plan in force.

The client was involved in a serious accident and was rendered a paraplegic with only partial vision. The client was 100% at fault. The auto policy was limited to the \$400. per week!

The client has commenced an action against the broker claiming that the broker did not advise the client of the limits and conditions **at each renewal**. The application does not permit information with regard to occupation or income and the broker was not aware of where he worked at the time of Bill 59 or of his later change. Nor was he aware of the client's income.

The courts have ruled that a prudent broker must advise clients of what is covered and what is not and keep the client informed throughout the term of the policy or policies.

Over the past several years I have been involved with 9 cases where a civil action has been brought against an Insurance Broker or Agent for the lack of the Excess Economic Loss Endorsement - OPCF 45. That probably represents a greater number than the average broker would have effected for the entire office! This endorsement was introduced in Jan. 94 and was eliminated with Bill 59 in Nov. 96. In most cases the agent/broker made clients aware in an acceptable manner the needs and benefits of this endorsement. But when the claim occurs and the OPCF 45 has not been added to the auto policy an E & O action has been commenced against the broker.

While dealing with one of these cases last November, the lawyer suggested that it will only be a matter of time before similar claims will be brought against brokers for the lack of Optional Benefits and most particularly , Increased Weekly Income. He was right and the outcome of this case may establish a precedent.

Clients memories may fail, particularly after an accident and 3+ years later. It is well recommended that a notice, either in the letter accompanying renewals or with a separate enclosure be sent **with each renewal** and advising of these Optional Benefits. The correspondence should encourage the client to call his/her broker if situations have changed or the client feels that he/she may need any of the benefits.

It is not likely that the notice will attract a significant number of Optional benefits. The current plan is said to have basic benefits that satisfy approximately 95% of auto policyholders. But it will be that other 5% that will bring the actions. The recommendation is designed as **a defense mechanism against future E & O claims**. Make sure that you keep a record of your continuing method to notify and that it is used consistent with all applications and renewals.

In the OPCF 45 cases that have been settled, they have all involved some participation with the broker's E & O. This means that the brokers deductible will be applied! Consistent notification and practices are a benefit to eliminate or reduce the claim. Remember: defense is the best offense!!!!

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