



## Current Articles 2000 – October

### Post Underwriting

The practice which has been named "post underwriting" applies when the underwriter or insurer interprets the underwriting requirements or policy wording after a claim has occurred. Although most insurers would argue that it becomes necessary in the settlement or perhaps denial of a claim, the decision based solely on post underwriting being applied to the original application or interpretation of a policy wording can cause serious problems to the broker.

Short term Travel Accident policies are almost always underwritten this way. A brief application is completed accompanied by payment and the insurer issues a policy. When a claim is presented, the policy underwriting and policy conditions are applied. Pre-existing medical conditions, sports exclusions and others can cause a restriction or denial in the amount of a claim. If the broker had not alerted the client to these conditions, it is quite possible that the broker will be subject to an E k O claim. The Ontario Insurance Commission has indicated that there is a considerable increase in inadequately satisfied travel accident claims. I wonder if the travel agents who also sell this product without a broker or agent license have a similar problem !!!

One example of commercial insurance post underwriting may apply as a result of a material change of risk. An example may be when a manufacturer introduces a new process involving volatile chemicals and which he has stored on his premises in large quantities. This would truly be a material change and the insurer would be within their rights for a denial. But what about the broker? If the broker at the time of writing or renewing the policy had not made the client aware of what may constitute a material change, the broker will be deemed remiss in his duties and may be held liable. Remember, after the Fine's Flowers Case in 1977, there have been more E k O claims against brokers for what they did not explain to the client or for items or coverages that are not included as compared to explaining the actual coverages included. Currently, I am working on my third case concerning the lack of replacement cost. In all cases and due to the particular risks, it is not likely that the replacement cost could have been effected. But because the broker did not advise that the policy did not include replacement cost or that it was not available, the broker may be held responsible for the difference between the ACV settlement and replacement cost. In one case this is a difference of over \$120,000.

In personal lines and because the property policies have so many differences in their special limits, coverages, etc, a greater possibility of having the insurer make a decision after a loss may occur. Several years ago and when waterbeds were the fashion, a waterbed that leaked and caused damage were a "negotiable" loss. Was it considered a "domestic appliance"? And then insurers introduced a Waterbed Extension Endorsement and from that point on there was no negotiations. If the broker did not add the endorsement -- claim denied and the broker responsible for not securing the correct coverage and even if the broker was not aware of the waterbed.

Today and with the increase in home businesses, the problem has increased. What constitutes "business use"? When does a content item become "business property"? Recently a consultant

friend who is travelling to Malaysia inquired as to coverage and most particularly on his \$3,000.+ laptop computer. The particular homeowner's policy covers business property up to \$2,000 and only on the residence premises. No good. Although the home business extension endorsement would cover his business computer, the particular insurer's home business extension covers only in Canada and the USA. Again -- no good. Some others cover Canada and all parts of the world except USA. If he takes the laptop on a personal trip but uses it to retrieve business emails, is the computer now business property?

The only protection for a broker is to get to know your commercial clients businesses -- what they do and where, what they make and with what materials etc. For personal lines clients it is imperative to know the interests, activities, hobbies and business involvement's to properly obtain the right coverage and minimize the broker's errors and omissions exposures. The most frequent cause of an E & O is the lack of or insufficient coverage.

**James E. Bonnay,**  
C.I.P., C.C.I.B.  
Insurance Consultant

Phone 905-333-1727  
Fax 905-333-0683  
E-mail - [jamesbonnay@cogeco.ca](mailto:jamesbonnay@cogeco.ca)