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A Warranty Clause

Policies may include Statutory Conditions, Additional Conditions and Warranties. Knowing the difference is important in order to prevent an errors or omissions claim. Statutory Conditions found in auto and fire policies are regulated by statute and cannot be changed except with an amendment to the Insurance Acts. Additional Conditions found in other types of coverages may include these Conditions and as they are not regulated, they may vary from one company to another. Some policies, Homeowners for one, may include both Statutory Conditions an Additional Conditions.

When a policy includes a true Warranty Clause, the broker must use extreme care to advise the client as to the requirements of the Warranty, to make sure that the client understands the consequence of breaching the warranty clause. Many insurers require that a copy of the warranty be signed by the insured. This is a good idea for protection of the broker as well, but if it is proven that the client was not explained or understood the warranty clause and even though the client has signed a copy, the courts may rule in favour of the client if the warranty has been breached. This will invariably bring an Errors & Omission claim against the broker.

The danger of a warranty is that even if the breach of the warranty in not material to the cause of the loss, the mere fact that the warranty has been breached is sufficient for an insurer to deny a claim. The High Court of England established a precedence when it stated: "*a great advantage of warranties to insurers is that their breach entitles them to repudiate quite irrespective of their materiality.*" Any breach of a warranty entitles the insurer to deny coverage even though the breach was not directly linked to the cause of the loss.

Jewellers Block and Furriers Block policies may have many "warranty" clauses. One such loss involves a small jewellery store where a claim was denied after thieves cut a whole in the roof at 10:30PM. On investigation the insured was asked how many employees were present when the store was closed at 6:00PM. The answer was that the owner was alone. The warranty required that two people be present when the store is opened or closed and as this was breached, the claim was denied. In reality, it wouldn't have mattered how many people were present at closing time. Whether there were two or ten people present would have had no effect on the later burglary loss!

A local case which has been reported in the Hamilton Spectator, Toronto Star and the Lawyer's Weekly, however does show some signs of relief for warranties. In this case, Ancaster Jewellers were held up one Christmas Eve, 1998. Their policy required that their sales area be monitored by a video surveillance system during business hours.

Following the hold up, the tape was examined and it did not record the hold up. It is believed that the VCR failed mechanically and that the tape had wound itself around the capstan. At the Court of Appeal it was also ruled that since the recording device was activated by an employee that an error by the employee in not activating the VCR did not void the insurance. The decision cited that “once Ancaster installed the reasonably fail safe protective system and properly instructed its employees in its operation and use, it has met its obligations as named insured.” “ To hold Ancaster to a standard of perfection that excludes the possibility of human error turns it (Ancaster) into a guarantor and effectively renders meaningless the qualifying phrase ‘insofar as is within the Named Insured’s control.’ ”. A “win” for the client but it took over 4½ years to finalize.

The message here is loud and clear! If the policy contains a warranty --- make sure that your client understands its effects and that you point out the warranty conditions in writing or at least document your file accordingly.

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