



Current Articles 2003 – May

Limits? Are they adequate?

Of the last six cases that I have been asked to review and give an opinion as an expert witness, 5 of these involved losses to property and the limit of insurance was insufficient to provide the indemnity for the losses that the insured expected.

Not all situations may be the fault or error of the broker, but unless the broker has handled the coverages and/or recommendations in a professional manner, the broker will be served with an errors and omissions claim. In the current mentality of the courts, it seems that if the coverage is inadequate - **it must be the broker's fault!**

When a broker becomes involved with a client and the client is asking for the broker's assistance as to property values, the broker must be extremely careful as to how the client perceives the broker's advice. The "Fines's Flowers" case made the broker liable for negligence in the manner in which he provided professional advice to his clients. A broker cannot appraise or establish the value of property. A broker can only make recommendations based on his expertise. For a broker to act as an appraiser creates a conflict of interest. The absolute best recommendation is to advise the client to obtain an appraisal. If a broker makes a recommendation as to the values and it is not accepted by the client, the broker should advise the client in writing confirming his recommendation and that the client refuses his advice.

Many times brokers will say that they "do an appraisal" when they effect a Homeowner's policy by using the Boeckh or similar method. Not so! If you look at these guides they are labeled as an evaluator only. Now it becomes an issue as to how the client perceives or is told of this practice. The client should always have the "last say" as to the limits. The protection for the broker is offering The Guaranteed Replacement Cost Clause providing the client will accept 100% of the evaluation of the building. Many brokers tend to "cheat" on the evaluation to make the limit "fit" the client's request. This is a bad practice and I know of one case where an insurer will not accept a GRC unless there is an independent evaluation completed at the expense of the broker.

One of the cases against the broker was caused by the broker placing the coverage using the same limits as the previous broker and without discussions or recommendations with the client. The inadequate limits created a 39% co-insurance penalty. The broker's E & O paid the balance!

Of all causes of claims for inadequate limits, Business Interruption is the winner (or loser!) If the broker completes the "work-sheet" or does not review this with the client, the broker may be held responsible. The protection for the broker on any Business Interruption policy is by recommending a higher limit and attaching (or including) a Premium Adjustment Clause.

Another case involves seasonal property located on an island. After the building burned it was determined that the reconstruction cost was almost 4 times the limit. Who is at fault? In this case and depending how the limit determined, I believe that there may be some responsibility on the client. Even an uninformed client should be able to realize that the limit of 25% to be insufficient

just by looking at the building. Depending on the procedure and documentation by the broker, I hope the broker can be successful if an action is commenced.

Reducing the potential for Errors and Omission claims for inadequate limits is no different than any other. The prudent broker must document the file, particularly when the client refuses to accept a recommendation or the client sets the limit. The broker should explain the effects of co-insurance on inadequate limits and keep a note to file as to the date and explanation to the client.

In all of the above cases the lack of documentation will prevent a successful defense for the broker. Complete documentation of recommendations, whether accepted or not, of discussions with the client, is the only way a broker can defend such actions.

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