



2014 CLM Annual Conference

April 9, 2014 – April 11, 2014

**Boca Raton Resort
501 E. Camino Real
Boca Raton, FL 33432**

Roundtable 3: Thursday, April 10, 2014 (3:30 pm – 4:30 pm)

Behind the Curtain; The Secret Lives of Brokers and Underwriters

Who Buys and Sells Insurance?

The process of purchasing commercial insurance is substantially more complex than calling your State Farm agent or going on line. With a few very limited exceptions, companies cannot contact an insurance carrier and buy commercial insurance policies directly, they must use insurance brokers. Brokers are state-licensed to act as an insured's representative in purchasing insurance policies on their behalf.

Retail brokers are hired directly by the clients/insureds. Retailers will generally have access or appointments from "standard lines" carriers to purchase insurance. However, in order to access surplus lines carriers, who specialize in difficult or unusual policies, a retailer may need to use "wholesale" brokers, also known as the brokers of the brokers.

Risk Managers are individuals within a company responsible for overall management of an organizations risk. This will likely involve duties well beyond the mere purchasing of insurance, such as loss control, safety and legal departments.

Underwriters are those people within an insurance company who negotiate with brokers on the terms, conditions and pricing for an insurance product.

Insurance Basics and Products: how is this supposed to work?

Insurance policies can be purchased for everything from the mundane (auto insurance) to the exotic (Santa's beard, a coffee-taster's tongue and other oddities). When asked why a policy doesn't cover everything, the answer is commonly because different products were developed to cover different exposures and risks of loss. Environmental, property, auto, D&O, malpractice, warranty coverages are just a few of the common types of insurance purchased by corporate entities.

A few key terms that are part of the everyday lexicon in the production world: BOR, E&S, ISO, MGA, loss ratio, loss runs etc. will be briefly defined.

Insurance availability and affordability are based upon the potential for profitability for the insurance carrier. As a new exposure is recognized by a trend of losses and policies are exposed for something they never anticipated or meant to cover, carriers either exclude the coverage or stop writing an entire line altogether. Examples: asbestos and mold; mold exclusions on the CGL also resulted in new product development with policies specifically designed to cover mold claims.

Life Cycle of an Insurance Placement

Brokers create a submission for underwriters that includes standard and specialty applications appropriate to the line of coverage being sought, loss history of the entity, a description of the business or entity seeking coverage and additional information and documentation as required by the underwriting company. Along with these documents they will also provide their coverage requests which can be quite specific.

After reviewing the information, an underwriter will decide whether they want to provide a quote. If they do, they will use a rating tool to determine price and generate a quote with the forms, terms and conditions along with any subjectivities.

Based upon the original quote, the broker and underwriters will continue negotiations over pricing, terms and conditions. Oftentimes, insurance products also provide services such as loss control or claims services and carriers will make presentations to the clients during this period.

Finally, the insured will make a decision and bind coverage. The broker will double-check the binders and policies to ensure that they fully reflect the negotiated terms.

Practical Application of the Information when a Claim is Presented

The most information most non-coverage litigators ever see beyond a policy number in their original transmittal from an adjuster is likely to be a certificate of insurance. Dissecting the certificate will be discussed.

The broker is most likely the person who put the insurance carrier on notice. They will almost certainly have an ongoing relationship with the insured. Claims adjusters are highly unlikely to have any knowledge or relationship with the insured and in some cases may not even know how to contact them.

Adjusters should always try to contact the underwriters and the brokers. Underwriters and brokers will be able to give detail and insight into the status of client/carrier relations (which can be delicate). Brokers and underwriters may also have informative details on the loss, particularly if the loss was some time ago but only recently reported to the carrier.

Common Areas Where Brokers Can Provide Assistance

In the event that the claim is continuous and progressive in nature and implicates more than one policy year, or if the claim overlaps into more than one coverage product, the broker can assist in identifying other potentially applicable policies.

The broker/insured relationship is truly relationship driven. Often brokers will maintain relationships with key personnel from a company long after they change employers and can assist adjusters and counsel in finding percipient witnesses.

Brokers can provide historical “color” to the circumstances involving a claim and the insured’s business at the time if they are no longer in business or have gone bankrupt.

Brokers also keep documentation of their discussions with insured, underwriters and sometimes even claimants.

Brokers studiously maintain records of certificates of insurance in most cases. Carriers (underwriters) generally do not keep certificates on file. Based upon whether AI status is conferred by schedule or on a blanket basis and the blanket terms, broker records may be key in determining AI status of parties.