

Communication With Clients Key to Avoiding Professional Liability Claims



By Craig Hudson

A recent case before the Florida Fourth District Court of Appeal illustrates the potential pitfalls that can occur when there is a breakdown of communication between agents and clients, and serves as a reminder of the important steps brokers should take to avoid a malpractice claim by their clients.

In this case (*Gelsomino v. Ace American Insurance Company et al*, Nov. 9, 2016), an agent's contracting client, T & T Contractors of Jacksonville, Fla., was expanding its domestic business to the Bahamas and needed general liability and workers' compensation coverage for its operations there.

Additionally, in order to conduct its business activities in the Bahamas, the company needed to create a separate Bahamas corporation, which the client did and named it T & T Services.

At the request of his client, the agent obtained an international insurance package policy which would have included all of the appropriate coverages.

Apparently, because the agent did not understand that all business had to be done in the name of the Bahamas company, the certificate of insurance was issued to the Bahamas company, but the actual named insured in the policy was the U.S. entity.

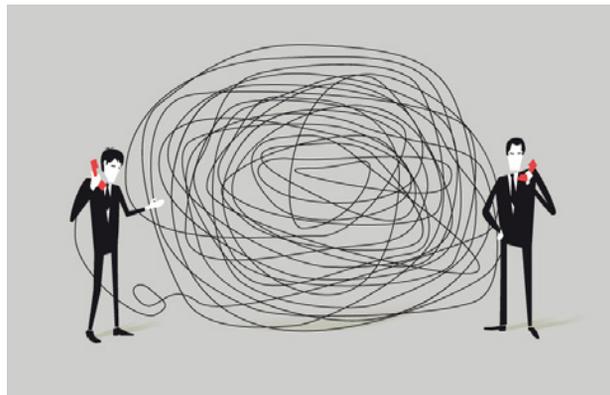
An employee of the Bahamas company, who incidentally was the brother of the owner, was severely injured while working in the Bahamas. The employee's claim for workers' compensation benefits was denied by the carrier because the named insured was the U.S. company (T & T Contractors) and not the Bahamas company (T & T Services) that he was working for in the Bahamas at the time of the accident.

The Fourth District Court of Appeal reinstated an earlier jury verdict that found the broker to be 35 percent at fault for the company suffering lost earnings of \$73,250; past medical expenses of \$10,000; and future medical expenses of \$151,370. The jury found the broker negligent for failing to procure insurance, as the policy was obtained in the name of the wrong legal entity, and was a "legal cause of the plaintiff's loss, injury or damage."

The Court of Appeal's decision is undoubtedly interesting to attorneys defending insurance agents because it discusses issues of an agent's duty of care, causation, proper measure of damages and compara-

tive negligence of the client in failing to accurately describe his business operations. For insurance agents, this case demonstrates the importance of communication and understanding between the insured and the agency to avoid future malpractice claims.

Whenever an agent is writing business for a new or existing client, the most important starting point is listening.



Agents need to make sure to clearly communicate the type of insurance and the amount of coverage the client desires.

When multiple business entities are involved, one should be certain which company is being insured even if a related company is paying the premium.

Once the agent has the order, it is important to review the type of insurance, coverage limits, deductibles and any exclusions to coverage contained in the policy. If an application is being completed, send it to the client with an email or cover letter telling the client to notify the agency or agent if the application or requested coverage is inaccurate and require them to return the signed application. If it is the responsibility of the agent

to send the client the policy, encourage the client to read the policy and call if they have any questions or concerns.

Try to avoid any commentary about the policy. For instance, if the client is being moved to a different insurance company, do not represent that the replacement policy is the same as or just as good as the prior policy unless there has been confirmation from

the new carrier that the policy is indeed exactly the same as the previous one.

Perhaps, in the referenced case, had the broker and the client done a better job communicating with one another as

to what insurance was needed and that all operations in the Bahamas would be performed by the Bahamas company, the proper policy would have been procured.

Lastly, it was not clear in this case whether this particular broker had experience dealing with companies that were doing business in the Bahamas. If the broker was inexperienced in this area, the broker should have referred the client to an agent who specialized in obtaining international business policies. ■

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