



## BEST PRACTICES

## Brokers must help clients grasp policy specifics

B.C. appellate court says broker's failure to advise on policy exclusion led to coverage gap

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A broker has an obligation to help clients understand policy specifics and avoid coverage gaps. And it's not necessarily going to save them if the client hasn't reviewed the policy, the British Columbia Court of Appeal found recently in *Alvaro v. InsureBC (Lee & Porter) Insurance Services Inc.* The Court of Appeal's upholding of a trial decision provides a cautionary reminder on best practices.

Brokers and insurers can learn three lessons from the case:

- Consistently provide insureds with complete copies of their policies at both inception and renewal.
- Insurance summary and renewal documents should highlight the need to review policy wordings, provide examples of material changes of risk, explain the broker's duty to advise on any material changes and particular changes in occupancy and any potential vacancy, and discuss available coverage for vacancy.
- Brokers should return to the practice of keeping careful notes, either digi-

tal or handwritten, on all significant communications with insureds. These must be drafted in view of the specific communications that took place, and the risks and gaps in coverage, and available coverage to avoid those gaps.

### Fact summary

The insured was a commercial landlord whose property was destroyed in a June 2013 fire. The insurer denied coverage because the property was vacant, and the policy included a vacancy exclusion. The insured knew the property was vacant because it had evicted the tenants and was in the process of renovations before renting to others.

The broker had been providing insurance services to the insured for 20 years. The broker had forwarded a copy of the policy to the insured in 2007, but it was not its practice to forward another copy on renewal. The renewal letters did not advise of the vacancy exclusion or provide examples of material change of risk. A vacancy endorsement could have been obtained for \$295.

### The decision

The judge rejected the commercial landlord's evidence that it had advised the broker it would be evicting the tenants and making renovations prior to the fire. But the trial judge also found the broker did not fulfill its duty of care throughout its relationship and held it liable.

These are some of the weaknesses in the broker's case:

- The broker did not have contemporaneous notes related to the discussions.
- The broker was not in the practice of providing a copy of the policy on renewal and was not certain when the plaintiffs last received a copy.
- The renewal letters did not highlight the vacancy exclusion or the requirement to advise the broker of any material changes.
- The renewal letters did not provide examples of a material change.

Insurance brokers have a stringent duty to provide their clients with information and advice. In this case, the broker knew it was a rental property and so there was risk of periodic vacancies. There was no evidence the broker brought this specific risk to the insured's attention or gave advice on how to avoid this coverage gap.

The judge held the broker couldn't rely on the plaintiff's failure to read the policy when the renewal documents did not tell them to do so. The judge's decision notes, "A customer is entitled to rely on the expertise of an insurance broker to provide that advice without the customer raising the question."

Since the broker knew it was a rental property, it's their responsibility to advise the insured about what additional coverage should be placed to protect coverage during vacancy. The broker's liability stems largely from its failure to explain how a vacancy endorsement could prevent a coverage gap. The insured didn't contribute to that loss by failing to read their policy. CU

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