

NEWSLETTER

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INSURANCE BROKERS

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KEEP
CALM
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This newsletter is focused at Insurance Brokers and the need for them to have proper insurance cover in place. An Insurance Broker provides specialist advice to their clients and as such, must ensure that they always act in the interests of their clients and maintain a high degree of care and skill. In terms of the FAIS General Code of Conduct the general duty is that “a provider must at all times render financial services...with due skill, care and diligence and in the interest of clients...”

Why is there a need for insurance brokers to have Professional Indemnity Insurance?

Professional Indemnity Insurance cover is a requirement in terms of the Financial Advisory and Intermediary Services Act of 2002 (FAIS Act). The amount of PI Cover that is required is determined by the category that the FSP falls into. The minimum PI cover is R 1 million. The Act further stipulates that where an FSP receives clients' funds, in addition to PI cover Fidelity Cover is also required.

Apart from the regulatory requirements, having professional indemnity insurance will protect an insurance broker in the event that a claim arises. Individuals have become more educated in as far as the law is concerned which has increased the number of brokers' PI claims over the last few years. This litigious environment together with the tough economic space means that a claim could cripple a

brokerage or result in their demise should cover be lacking.

PI cover will furthermore limit the reputational risks associated with a claim and enable the broker to continue with normal business operations. This is due to the fact that an attorney will be appointed who is experienced in dealing with these claims and can guide the insured through each step of the claim and provide advice on how to handle the plaintiff. In some instances, the Plaintiff could be an important client to the insured's business.

Professional Indemnity Insurance for Insurance Brokers and Financial Intermediaries

A PI Policy is aimed at providing indemnity to an Insurance Broker for its legal liability. The Policy will respond where the claim is brought by a third party who has suffered a loss/damage flowing from the insured's actions. The claim typically stems from an insurance broker's error, omission or his/her failure in providing the correct advice which would be expected from a competent professional in the performance of his **professional services**.

The policy is also aimed at covering all the costs & expenses (included in the limit of indemnity) associated with the claim that is brought against the insured.

How can claims be prevented? – Risk Management

We have noted that very often it is not a lack of knowledge that leads to the professional indemnity claims but rather the non-adherence to basic office management procedures.

Apart from ensuring that your business has adequate PI cover in place we do suggest that businesses (Insurance Brokers) adopt some risk management tools to limit/eliminate the risk of a claim.

Businesses should have an introspection regarding inter alia:

- Supervision of Staff;
- Proper checks and balances in place to prevent internal fraud;
- Education & Training of employees regarding processes and procedures as well as the effects of non-adherence;
- Effective Communication with clients;
- Ensure that all material facts are disclosed to the insurer;
- Ensuring that the client's risks are properly described;
- Ensure proper completion of the Proposal Form. The Proposal Form should be signed by client after full understanding of its content.

Who can I contact to obtain further information regarding Professional Indemnity Insurance cover?

Leppard Underwriting provides PI cover to Insurance Brokers. Should you require further information please direct your query to stuart@leppard.co.za or contact us on **011 459 1640**.

PRACTICAL EXAMPLES OF PROFESSIONAL INDEMNITY CLAIMS

Case studies

1. An insurance broker was instructed by his client to place his vehicles on risk with the insurer that the client agreed to insure with. The confirmation of acceptance was forwarded to the broker with a specific date on which the policy required to incept. An employee at the brokerage failed to pass the information received from the client to the activation clerk and the policy was deemed to have not been taken up.

The client was involved in an accident and submitted the claim to the broker. The broker realized that the cover was not placed with the insurer and that the client was at the date of accident uninsured.

The damage to the client's vehicle was an amount of R 53 263.62

2. A client instructed his broker to move all his vehicles to a personal policy with a new insurer. To this end, a proposal form for Personal Insurance was required to be completed. The proposal form required information relating to risk and security details which included details relating to whether the policyholder had been involved in a criminal/civil offence or had a civil judgment taken against him/her. It appears that the broker completed the proposal form on behalf of the client. The client merely signed the form without taking cognizance to the information contained therein. The broker failed to explain the contents of the proposal form. The broker had indicated NO to the question relating to civil judgments without confirming this with the client.

Following inception of the policy, the client had an accident with his Mercedes Benz CLK 63 AMG. A claim was submitted to the insurer where after the insurer voided the policy from inception due to "misrepresentation, mis-description and non-disclosure". It was discovered that the client had previous convictions which were not disclosed to the insurer.

The broker was held liable for an amount R 404 489.58.

Note:

Interestingly the court in the case of Lenaerts v JSN Motors (Pty) Ltd and Another 2001 SA 1100 (W) stated the following duties relating to insurance brokers:

"...in our law...the duty to exercise reasonable care and skill in appropriate cases extends to the duty to take reasonable steps to elicit and convey material information both from and to the insured. This includes the information about the terms of the policy which, if contravened, might leave the insured without cover. It is part and parcel of the broker's general duty to use reasonable care to see that the insured is covered."

3. The broker was mandated by his client to obtain insurance cover for his motor vehicle. The client accepted the quote received and mandated the broker that the vehicle be insured. The client was involved in an accident and his vehicle was damaged. The insurer however rejected the claim on the basis that the client's vehicle was not fitted with a tracking device. This was a policy requirement.

A transcript of the conversation between the broker and client revealed that the client was a lay person. Furthermore, the broker outlined what he (the broker) deemed important conditions of the policy however omitted to explain that if the vehicle is not fitted with a tracking device, there will be no cover.

Note:

From the above it is imperative that a broker/intermediary must exercise due care in giving accurate advice/explanations. A broker should advise their client if a policy contains limiting/exempting provisions which if not brought to the clients' attention, may result in the policy not responding.

4. The client's insurer rejected the claim on the basis that there was non-disclosure. On the policy documents the client was stipulated as the principal driver. After submitting a claim to the insurer the claim was voided on the basis that there was material non-disclosure in that the client's husband was the regular driver. The client's husband was not included as a regular driver.

The claim against the broker was for an amount of R 305 440.79 on the basis that the broker failed to explain to the client the meaning of the terms regular/principal driver/main driver/other regular drivers.

From the voice recordings it was evident that the client did not appreciate the difference between the terms main driver/regular driver/other.

Fatima Ebrahim