



Avoiding Fire Hazards

Underwriting fire coverage and administering fire claims can present unique potential E&O issues. This article will attempt to identify potential pitfalls associated with fire losses and provide suggestions for avoiding them.

I. Getting Started - The Application

Submitting accurate information on the application for insurance is of critical importance in avoiding potential liability. Many times, after the carrier investigates a fire loss it will deny the claim and void the policy ab initio (back to the beginning). The carrier will point to some information in the application that is incorrect or misleading and assert that it would not have issued the policy if the correct information had been included in the application. At this point the policyholder may begin to focus on the broker in an attempt to shift blame and recover any damages.

Typically the policyholder will testify that he gave the correct information to the broker who then incorrectly filled in the blanks on the application. The policyholder may go on to say he did not have a chance to review the information and relied on the broker to correctly complete the application. The situation may develop into a swearing match with the customer saying one thing and the broker saying another. Matters become worse if the customer testifies that even though the application is signed, it is not his signature and the customer did not authorize anyone to sign on his behalf. Often the broker filled in the information received over the phone and asked the customer if the broker can sign for the customer to save time. The customer may give his authority to sign to the broker but time – and an uncovered loss – can cloud the memory.

A prudent broker will never sign for a customer. While this may make doing business seem more difficult; it can help avoid problems later. The broker should make sure the application includes complete and correct information regarding prior fires/claims (regardless of size), prior denials/cancellations and unusual fire hazards. The last category can be encountered with the application for a homeowner's policy where the applicant has a hobby or part time job that requires them to store large supplies of flammable liquids. This is the type of risk a carrier will say they would not knowingly accept.

II. Claim Assistance

Fires can be big news events for the local media and many times the broker becomes aware of a fire while it is still burning. Often a policyholder will call the broker from a fire scene wanting to know what to do and ask for assistance in reporting the claim. Problems can arise when the broker is asked if there is coverage for the fire loss and the broker responds without performing due diligence. A broker may assume fire coverage is in place and tell the policyholder not to worry. In many instances there is no coverage for a number of reasons including the policy recently lapsed for non-payment of premium. In other instances the policyholder may have several locations covered under the policy but forgot to add the location that suffered the loss. Sometimes there are special requirements under a commercial policy that require the policyholder to take certain precautions to lower the fire risk. If the policyholder has not complied with these requirements it may cause the claim to be denied.

** The above example is provided by the program underwriter Swiss Re/Employers Reinsurance Corporation*



A broker can assume a legal duty he may not otherwise have by agreeing to notify the carrier of the fire. If the broker agrees to assume this duty, care must be taken to notify all of the customer's potentially responsible carriers. Courts have held that if a broker assumes a duty it must carry out that duty without negligence.

After a fire is extinguished, the policyholder can be very anxious to get the clean up work started. The policyholder may ask the broker if he may proceed with the clean up work. Although the clean up seems to be a routine matter to the broker this approval to start should come from the adjuster or carrier. If the work is started because the broker told the policyholder to start but the carrier denies the claim after investigating the broker may be in a difficult situation. The policyholder will look to the broker for any costs associated with the clean up if the carrier refuses to pay.

The same holds true with repair work. Sometimes the policyholder, carrier and contractor point their fingers at the broker when the carrier refuses to cover the work entirely or says the expense is in excess of what the policy will allow. Let's assume the broker tells the policyholder to start the repair work and the current building codes require additional work beyond just repair. The policy may exclude or limit coverage for any work associated with the improvements to meet the current building codes. When the carrier denies this expense in whole or in part the contractor will look for payment from the policyholder. The policyholder in turn will look to the broker since he gave approval to proceed.

The purpose in the above discussion is to remind the broker to use due care when underwriting and adjusting fire losses. The broker's due care starts with filling out the application accurately and correctly. It continues through to claim reporting. Hopefully the above will refresh your memory on what can be considered routine issues that are sometimes overlooked during the rush of doing business. Maybe an issue mentioned in the above paragraphs will be triggered at a later date when you encounter a similar situation and you will avoid a common pitfall encountered in handling fire losses.