

Are Insurance Brokers Professionals?

By Bruce B. Thomas

The terms “professional” and “professionalism” are routinely bandied about in connection with services, but what do they mean in the context of insurance brokerage? Given the controversies that insurance brokers have been embroiled in and the changes in their business practices and in the laws and regulations governing their services, it is a good time to consider this question.

Intuitively we understand that the word “professional” embodies two ideas. In its weak form, it means that one engages in an activity as a primary occupation. Since people who are engaged in some activity full-time are likely to have more working knowledge of it than those who are engaged in it part-time, this can be a meaningful term when it is applied to activities that could be conducted on a part-time basis. In its strong form, “professionalism” implies greater knowledge, a higher standard of care, and a higher duty to the client.

Clients are willing to pay more for services that they believe are of higher quality, and implying that one is acting as a professional is a common way of distinguishing one’s services from the average person who is engaged in a particular activity. However, the concept of “professionalism” is not particularly meaningful unless it pertains to services that require significant training, involve a high-degree of knowledge, cost a significant amount of money, or may cause significant harm if performed improperly. Clearly medical doctors and attorneys fit this strong-form definition of what it means to be a professional, but what about insurance brokers?

While placing insurance coverage does not require significant education and training, the cost of these services and the potential harm that might ensue if the services were performed incorrectly favor holding insurance brokers to a higher standard. Given that clients greatly value professionalism in the context of high risk activities, it is natural for insurance brokers to think of themselves as professionals and to conduct their services using a higher level of care. Acting with professionalism implies that insurance brokers maintain their client’s confidential information, strive to achieve and maintain a high degree of competency, and have a fiduciary duty to their clients.

Confidentiality

Of these responsibilities, maintaining client confidentiality is the easiest to uphold. Clients expect their insurance brokers will take steps to ensure that their information is not disclosed except when the broker is authorized or are legally obligated to disclose it.

Competency

Achieving and maintaining professional competency is a much more difficult standard to meet. It requires that insurance brokers perform their duties in accordance with laws, regulations, and technical standards. It requires them to educate themselves about the types of coverage that the insurance markets are offering and about the insurable risks that their clients face. Most importantly, acting competently requires insurance brokers

to provide their clients with unambiguous recommendations based on a thorough analysis of relevant and reliable information. If there are arguments in favor of insuring something, brokers have an obligation to state those arguments clearly and concisely.

Fiduciary Duty

Insurance brokers must also act with utmost good faith toward their clients. They must carry-out their duties with integrity, objectivity and their clients' best interests being the over-riding concern. Under this duty, the insurance broker must communicate information fairly and objectively, make special efforts to disclose all relevant information so that clients can evaluate their recommendations, communicate favorable as well as unfavorable information, and refrain from engaging in any activities that would potentially impair their ability to act in the best interest of their clients.

Information Asymmetry

Insurance brokers are in a much better position than their clients to understand the insurance markets, potential claim disputes, and which risks are and are not insurable. They are hired because they hold themselves out as having this greater level of knowledge. Given this information asymmetry and the significant potential harm that might result from inaction or faulty action, clients expect their insurance brokers to provide objective information about the risks they face that are insurable.

An Implied Duty

Regardless of how they see themselves or the specific legal or regulatory requirements that they must meet, insurance brokers have an implied duty to their clients to act in a professional manner. Given the informational advantage they have over their clients, it is unacceptable for insurance brokers to withhold information about potential conflicts of interest, negative outcomes, insurable risks, or insurance products that may address their clients' needs. Moreover, it is unacceptable for insurance brokers to ignore information that may prove valuable to their clients, even if it conflicts with how insurance brokers want to portray their services.

In light of this duty, it is no longer acceptable for brokers to ignore the collateral damages that their clients will suffer when they experience insurable losses. For large property insurance claims, these damages surpass any reasonable standard of materiality since they amount to 30% to 50% of what traditional insurance pays.¹ Moreover many of the world's largest insurers have indicated an interest and a willingness to insure this risk via Transurance, a new form of insurance coverage.

Now that collateral damages are insurable, insurance brokers have a responsibility to educate their clients about the magnitude of this risk and how Transurance can be used to insure it. Anything less than this is unprofessional.

¹ "Not Fully Paid: Property Claim Experts Speak out," Transurance Services, January 2010, by Bruce B. Thomas and L. Ware Preston, III, details this study and is available for download at <http://transuranceservices.com/Articles.html> where other articles about collateral damages and Transurance are also available.