

The Scope of a Broker's Duties

Do you feel frightened about regulation or well informed?...maybe it is time for a change.

If your compliance consultant has not advised you about the Environcom case you are definitely not well informed.

The recent Environcom court case has highlighted a number of issues about which all brokers should have been made aware. Your firm and your customers are at risk.

Briefly, a broker's client ran a waste recycling facility, and the claim was declined (the policy avoided) on grounds of non disclosure of material facts.

The client took the broker to Court for failures in his duty to them, as the broker had not (allegedly) sufficiently explained the disclosure requirements or what could be a material fact,

The judge agreed with the Claimant and the Expert Witness. Important points that

came out of the judgement were as follows –

The broker has a duty to explain to the client that all facts that are or arguably are material must be disclosed.

The client should be aware of what is material or may be so, and understand how this is relevant: the broker has a duty to ensure the client has this understanding

The client must be made aware of the consequences of not disclosing any such fact which is or may be material.

If there is a change at the firm of an individual that

the broker would deal with, then the broker has a duty to ensure that the new contact has an understanding of 1, 2, & 3 above. The broker cannot rely on the fact that this has been explained to the client firm before and so assumes this has been passed on to the new person.

All documentation sent to a client must be clear and unambiguous in relation to the client's duties and consequences of full disclosure, or non disclosure.

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It is not sufficient for a broker to rely just on standard explanations in template or standard forms, or as annexes to proposals or reports.

For the broker, it is vital that he has a full understanding of the risk he is looking to insure, including a specific requirements of the trade or profession, taking into account not only the physical demands of the risk, but also the operational requirements imposed on the firm, e.g. any specific licences they are required to hold or any restrictions imposed on their activities by another body. *In short, part of the broker's job is a duty to help unearth material facts.*

When dealing with a client, the broker must be able to demonstrate that he has made the client aware of the matters above together with his duties and obligations and how this has been accomplished. It is not sufficient just to rely on the terms of business or standard paragraphs in quotation or renewal letters pointing out the need for full disclosure. The broker has a duty to en-

sure his client understands what this means and the consequences of getting it wrong.

In summary, a broker has a duty to ensure ***his client fully understands what he is buying, what must be disclosed to an insurer, the effects of disclosure (or non disclosure), what a material fact may be, make full enquiries of all incidents whether or not they led to a claim and also, fully understand the nature of the industry in which the client is engaged and the specific requirements and risks applicable to that industry***

All brokers should review their client facing documentation and procedures to ensure that there is not an over-reliance on standard terms or wordings and that all information to clients is specific and robust and that there is a procedure for recording that necessary procedures are in place for documenting conversations with the customer.

Don't let your business life be governed by the FSA Rule Book or compliance consultants who only have the re-

source to quote from that document. Sometimes it takes investment in research and a broader view on what is happening in the industry and the Courts to ensure that your Systems and Controls are up to date.



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We welcome your questions and feedback.