Insurance broking

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An insurance broker is defined as a person or company whose job is to give people independent advice about what insurance is available from different companies, and to arrange insurance for them. An insurance broker represents the insured's interest, and generally has no contractual agreements with the insurer. Brokers are not aligned with any one company and can explore and offer products and services available in the market and can tailor fit insurance packages for the client's needs. If a broker acts on behalf of an insurer, it should promptly inform the insured. It is a fact that in certain transactions, the broker may act on behalf of both the insured and the insurer. Section 301 of the Amended Insurance Code defines an insurance broker as "any person who for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself".

In the market, brokers "tend to service larger and more complicated business insurance needs". As an insurance intermediary, brokers play a vital role in bringing insureds and insurers together. An insurance agent, on the other hand, is an insurance company's representative.

Several companies would prefer to deal with insurers through brokers for a number of reasons, such as: a) ease in selecting an insurer and the right insurance policies, in other words the broker can save the client time, money, and worry, b) dealing with only one entity for various insurance needs instead of dealing with several insurers, c) getting the best premiums within the insurance budget, and d) assistance in the management and settlement of claims and other administrative matters. Brokers can also assist a client in defining clearly the insurance needs and obtaining the best insurance quotes and rates. Insurance policies can be complicated and the broker can assist the client in understanding them. They can also give advice on risk management. Brokers must understand the risks facing the clients and assist them in reducing risk.

The practice of dealing directly with insurers rather than through brokers is called disintermediation.

Insurance Broking in the Philippines

Under the Insurance Code, no compensation is allowed to be paid to any broker not licensed by the Insurance Commission. All brokers are required to be licensed. Prior written examination is required. Brokers, as with the agents, are covered by the requisite of competence and trustworthiness. Applicants for a broker's license must clearly indicate the words "insurance broker" or "reinsurance broker" in their corporate names.

Representing the interests of the insured, brokers cannot issue policies neither can it involve itself in the process of its issuance. Under Section 311, a broker is required to post a bond in favor of the people of the Republic of the Philippines in such amount as may be fixed by the Insurance Commissioner but in no case less than Five hundred thousand pesos to answer for funds coming into the broker's possession. Also required are error and omission policies for breach of duty as insurance broker.

Fiduciary duties to insureds

An insurance broker is bound by the duties of honesty and competence. But is there a fiduciary duty towards the insured? Section 413 (h) speaks of a duty to hold the insureds' funds in a fiduciary capacity.

In a New York case, *People ex rel. Cuomo v. Wells Fargo Ins. Services, Inc*., the New York Court of Appeals ruled that "an insurance broker does not have a common-law fiduciary duty to disclose to its customers 'incentive' arrangements that the broker has entered into with insurance companies". Attorney General Cuomo had argued that Wells Fargo Insurance Services, Inc., an insurance broker, breached its fiduciary duties to its clients, the insureds, by failing to disclose the contingent commissions it received from insurers in connection with its client's insurance placement. The Court held that while brokers are also covered by the "general rule that an agent owes a duty of loyalty to its principal", undisclosed compensation arrangements with insurance companies did not in and of themselves violate any such duty. Although brokers are agents of their clients and that the principal-agent relationship is fiduciary in nature, the court recognized that brokers, as intermediaries, have a "dual agency status" performing functions for both insurers and insureds. It also pointed out that brokers are very often paid for their services in placing insurance by the insurer. And, as such, Wells Fargo's collection of contingent compensation was both "commonplace" and merely reflective of "industry custom".

Brokers' Commissions

Commissions received by brokers have been contentious is certain jurisdictions. According to A.M. Best, commission and brokerage charges accounted for 26 % of U.S. property and casualty insurers' expenses in 2015. Lloyds of London has also reported higher commission and fees with operating expenses of 9.2 billion Pounds, 44 % more than the figure five years earlier. Another issue is the undercutting of rates and the discounting or rebating of commissions. Excessive lowering of insurance prices could be detrimental to the insured client which makes the insurers stricter in interpreting claims, while lower revenue for brokers results in service cutbacks. This has led some jurisdictions to impose minimum fees for the brokers.

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