HOT HINTS FROM THE HOTLINE
A SUMMARY OF SOME RECENT ARTICLES AND CASES OF INTEREST TO WHOLESALE BROKERS

By: Milton Thurm, Esq. PIWA Hotline Consultant

We haven't seen many recent decisions dealing with agents and brokers, and specifically wholesale or excess line brokers, but there were several decisions of interest worthy of comment.

BROKER MAY BE LIABLE FOR "THROWING" THE BULL

In a somewhat unusual set of facts (for us Easterners, anyway), the insured was engaged in the business of putting on rodeos and owned bulls and other animals as well as trucks and trailers. Rather than having a policy in place, the insured would contact his broker before each show and the broker would provide a certificate evidencing the coverage for that specific rodeo. On one occasion in 2012, the insured contacted the broker and requested coverage for a rodeo to be held in Pennsylvania. The carrier which normally provided the coverage declined because the show was not in New York. An office assistant in the broker's office placed the coverage with a different carrier, Atlantic Casualty Insurance Co.

After the Pennsylvania show, four bulls escaped while being moved from a holding pen to the insured's trailers and injured a number of bystanders. When the

incident was reported to the broker, it was discovered that the policy contained an exclusion for injuries or damage caused by animals. Needless to say, the insurer declined coverage, based not only on the exclusion for injuries caused by animals, but also on an exclusion for losses arising out of the use of an "auto" which the policy defined loading and unloading operations.

The insured thereafter sued the broker for his negligence in placing the cover for a rodeo with an animal exclusion. The broker argued that animal exclusion was not the cause of plaintiff's loss since coverage would have been denied anyway because of the auto exclusion. In response, the insured pointed out that he had been doing business with the broker for over six years; that he relied on the broker for all his insurance needs, including his homeowners policy and that he understood that the trailers were covered under his truck insurance.

The court denied the broker's motion for summary judgment, holding that factual issues were presented as to whether a "special relationship" arose between the insured and the broker and whether the broker was negligent in failing to advise and guide the insured in obtaining adequate insurance coverage for all aspects of the rodeo operations, including the trailers used to transport the animals.

The take-away here is another instance in the trend of the courts to, at the least, find that there are factual issues to be determined on trial as to the nature of the relationship between an insured and if the broker has a continuing duty to advise clients on appropriate coverage or to recommend additional coverage that the insured did not request. Thus, a retail broker may be cast in liability if he/she has a long-standing relationship with the client when the client finds himself on the short end of coverage and claims that he "relied" on the broker to provide for "all his insurance needs."

MANAGING GENERAL INSURANCE AGENT OWED NO DUTY TO INSURED

A condominium development on Long Island retained a management company to manage the property. The management company, in turn, employed a broker, Bagatta, to obtain coverage on the complex. The broker obtained policies that were renewed a number of times before the insurer indicated it would not renew. In an effort to replace the coverage, an employee of the broker completed new applications, obtaining the information from an application for the prior policy, including the square footage of the buildings. Bagatta submitted the application to a wholesale broker, Insurance Intermediaries, which placed the coverage with the Scottsdale Insurance Company. Insurance Intermediaries ordered an inspection of the premises. A fire occurred in one of the buildings causing substantial damage. Scottsdale conducted an investigation that disclosed that the square footage of the building was understated on the application as was the square footage on the inspection report. Scottsdale claimed that the building was not insured for its full replacement value and paid only a portion of the claimed loss.

The insured brought an action naming the management company, the broker, Bagatta, the inspection company, Scottsdale and Insurance Intermediaries as defendants. All the defendants asserted cross-claims against the other defendants and all the parties moved for summary judgment. The insured sought, among other things, reformation of the policy. Scottsdale claimed that it would not have issued the policy had it known about the loss history of the insured, the age of the buildings and would not have insured for full replacement value if it was aware of the true sized of the complex. The court denied all the defendants' motions and cross motions to dismiss the complaint and all cross-claims, except that of

Insurance Intermediaries which it granted. The court found that Intermediaries owed no duty to the insured and, as such, was entitled to have the complaint and all cross claims against it dismissed. Thus, being in the "chain of coverage" does not mean that a wholesale broker will automatically be held in to ensuing litigation if coverage fails.

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