

Florida Underwriter Adetorial
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Why is Disclosure so Hard to Do?

In the fall of 2004, Eliot Spitzer launched an attack against the insurance industry that has shaken its very foundation. The initial allegations against the brokerage community have now been expanded to include numerous brokers, insurers and now regulators, leaving none protected from the firestorm of negative publicity. What first was the examination of price-rigging and contingency fee abuse has transformed itself into the evaluation of business practices involving balance sheet manipulation (finite insurance), collusion and unfair trade practices. Since launching the industry probe, Mr. Spitzer has subpoenaed property and casualty as well as life and health insurance brokers, primary insurers, reinsurers, reinsurance intermediaries, managed care companies and claims administrators. Whether on a personal crusade to further his career, or solely for the best interests of the insurance buying public, Mr. Spitzer has declared war on the industry and many states are falling into line behind him.

In reference specifically to the brokerage aspect of this probe, much of this investigation comes down to disclosure of interests. I have read many arguments from national and local insurance luminaries regarding this investigation and to say that most are defensive in nature would be an understatement. As a broker, you either work for the seller (insurer/reinsurer), or the buyer. Is it that difficult in business to disclose what side of the fence we work on a given day or within a specific transaction? What is damning about the situation is not necessarily that they were paid contingency commissions on placements service agreements, but that they had signed contracts with their clients stating that they would not be receiving compensation outside of the fees paid by the buyer. Had they disclosed such, I do not believe they would be in the position they are today. In addition, these brokers created artificial competition or “B quotes”, whereby it gave the appearance to the insurance buyer that competing quotes were obtained, yet with no intentions of ever being sold.

Now that the publicity spawned from these investigations has massacred the credibility of our industry, it is up to all of us in the brokerage community to elevate our ethical standards to a level that builds back our integrity with the public. In no means do I think contingency commissions are unethical; but if they exist, disclose such. Our firm prides itself on our ability to control the ultimate net cost of our clients’ insurance programs. Should we have the opportunity to earn more if we are able to control the costs/profitability of our carrier-partners, and thus our clients? Absolutely. Do I think that this would be an issue with any of our clientele? Absolutely not. If we at least disclose how we are compensated, our buyers can then choose accordingly.

At the same time that these investigations were launched, the agency and brokerage community in Florida scrambled to protect their clientele from the wrath of four hurricanes. It is at times like that when our value to the public comes to the surface as we help our neighbors recover from disaster by ensuring that the promises made by their

respective insurers are kept. It is also at those times when our product is not a commodity placed with the lowest-priced market at the highest commission rate, but rather the difference between a company staying in business or not. I am very proud of our profession and what we provide to the general public. I hope that through our actions not our words we can win back the trust of our clients.