

BROKER'S DUTIES WHEN REPORTING PROPERTY INSURANCE CLAIMS

What duty does a broker owe a client? It will vary according to what the parties agree. It can be as simple as providing insurance that the client has ordered. In contrast, it can involve extensive services that are negotiated and agreed upon in writing. Whether the brokerage service is simple or involved, a standard of care will apply. This case illustrates how the standard of care comes into play in the reporting of a property loss.

Once a broker places an insurance policy, there may be no further services owed to the policyholder. The insurance policy, a contract between the insurance company and the policyholder, typically requires the policyholder to report claims. If, however, the broker becomes involved in reporting a claim, then the broker is duty bound to meet the standard of care owed to a client. In this case, the policyholder constructed a high rise hotel in an area where subsidence was historically prevalent. When the building began to sink the policyholder realized there would be extensive damages and asked the broker to report the claim to the insurer. The broker did so in a perfunctory manner, merely reporting information about the incident without framing the claim within the property policy's 'subsidence' coverage. He was also passive during the claims process. In contrast, the insurer framed the loss as being excluded under the policy's 'settling' exclusion and denied the claim.

My deposition testimony was that the subsidence risk in this geographical area was common knowledge, the broker had negotiated the insurance policy with subsidence coverage, and the broker knew that the only peril that would have established coverage for this loss was subsidence. He also should have been aware of the settling exclusion and how the insurer might use it to deny coverage. He should have reported this loss as a subsidence claim and then advocated this coverage position on behalf of the policyholder throughout the claim handling process.

The insurer eventually settled with the policyholder for the property loss. The policyholder separately negotiated a favorable settlement with the broker.



This map is an outline depicting certain aspects of the case and is not intended as a complete description of the facts or of my testimony.