THE DIRECT COMPENSATION AGREEMENT

When a damage insurance representative oversteps his mandate

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This article is based on actual cases brought before the syndic's office.

Consumers have sent us complaints concerning the unscrupulous ways in which certain damage insurance representatives apply the Direct Compensation Agreement. This agreement was enacted in 1978—it is therefore quite shocking that certain representatives still do not fully understand the limits of their advisory role in this area.

The Complaint

Mr. Sylvain (MS) blows the whistle on a damage insurance representative who has been harassing him to pay for the damages to the vehicle of his client, Mr. Claude (MC). The representative has left three lengthy voice mail messages on MS's home phone; MS has appended these messages to his complaint. An ethics investigation of the representative is launched.

The Facts of the Case

While at the wheel of MS's car, his wife backs into MC's parked car. The two parties fill in the joint accident report. Since MS's vehicle is undamaged, he does not make a claim to his insurer. However, MC's vehicle is damaged and he declares this to his damage insurance representative.

The representative explains to his client that since he has filed a large number of claims, his premium might increase the next time his policy comes up for renewal. He therefore suggests asking MS to pay for the damages. Being unfamiliar with this type of transaction, MC mandates his representative to take care of the matter.

The representative accepts the mandate since he believes that he will be fulfilling his advisory role to his client by attempting to help him avoid a premium increase.

The Formal Complaint

I was responsible for filing a formal complaint against the representative before the discipline committee. Here are the first two charges included in my complaint:

1. On October 5, at the request of his client, MC, undertook to contact MS in order to request compensation for damages caused to his client's automotive vehicle, even though, as a damage insurance representative, he knew or should have known that in the event of an automobile accident, the third party incurs no obligation […]

2. Between October 5 and 20, demonstrated a lack of discretion, objectivity and competence by leaving voice-mail messages for MS and by seeking to pressure him into paying $1,306.34 in damages caused to MC's vehicle, even though he knew that the third party incurs no obligation […]

The Ruling of the Discipline Committee

The discipline committee found the representative guilty and stated the following in paragraphs 20 and 21 of the conviction:

"The committee believes that the respondent overstepped his mandate as a damage insurance representative by coming between his client and the liable third party in order to negotiate a settlement outside of the agreement. Good faith and an absence of dishonest intent do not constitute a defense […]" [unofficial translation]

Conclusion

The lesson to be learnt from the discipline committee's ruling in this case is that a damage insurance representative's obligation to act as a conscientious advisor must always be fulfilled within the boundaries of the legislation and regulations governing damage insurance.

Dismissal with Just Cause
REMINDER TO MANAGERS

Recently, I have had to deal with several cases involving professionals who committed serious breaches such as embezzlement, creating bogus insurance contracts and leaving clients without insurance coverage.

You cannot imagine how surprised—indeed how disappointed—I am to occasionally see disturbing situations where:

- Some professionals were terminated by their employers for committing breaches similar to the one described above.
- Though the employers terminated the professionals' employment they did not then notify the regulatory bodies of their former employees' actions.
- By not blowing the whistle on their former employees, these employers made it possible for such employees to find work with new employers and continue to commit serious breaches that harm other consumers.

Section 104 of the *Act respecting the distribution of financial products and services* imposes the following obligation on firms:

A firm that terminates its association with a representative must inform the Authority, in writing, without delay.

If the firm terminates its association with a representative for reasons relating to the representative's activities, it must inform the Authority of those reasons.

A firm that informs the Authority of such reasons incurs no civil liability thereby.

A form that is easy to complete is available on the web site of the Autorité des marchés financiers (AMF). There is no reason not to comply with your legal obligations under such circumstances. Pursuant to section 188 of the Act, the AMF forwards this notice of termination of employment to the office of the syndic at the ChAD in order to ensure that the appropriate follow-up takes place.